

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF PENNSYLVANIA

COMMONWEALTH OF PA, by	:	CIVIL ACTION
Attorney General JOSH SHAPIRO,	:	
	:	
<i>Plaintiff,</i>	:	NO. 14-cv-07139-JCJ
	:	
v.	:	
	:	CONFIDENTIAL
THINK FINANCE, INC., et al.	:	Filed Under Seal Pursuant to
	:	Confidentiality and Protective Order
<i>Defendants.</i>	:	

APPENDIX TO THE COMMONWEALTH'S
STATEMENT OF UNDISPUTED FACTS

VOLUME 1: LITIGATION DOCUMENTS
APP. 0001 – APP. 0625

UNSEALED

UNSEALED

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UNSEALED

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF PENNSYLVANIA**

COMMONWEALTH OF PENNSYLVANIA,	:	CIVIL ACTION
	:	
<i>Plaintiff,</i>	:	
	:	
v.	:	
	:	
THINK FINANCE, INC., et al.	:	
	:	
<i>Defendants.</i>	:	NO. 14-cv-07139-JCJ

**THINK FINANCE DEFENDANTS’ RESPONSE TO
PLAINTIFF’S FIRST SET OF INTERROGATORIES**

Pursuant to Federal Rules of Civil Procedure 26 and 33, Defendants Think Finance Inc., TC Loan Service, LLC, Tailwind Marketing, LLC, TC Decision Sciences, LLC, and Financial U, LLC (“Defendants”) object and respond to Plaintiff Commonwealth of Pennsylvania, Office of Attorney General’s (“Plaintiff”) First Set of Interrogatories (“Interrogatories”) as follows.

These responses are based on information available and analysis completed as of the date of this response. Further discovery, independent investigation, and analysis may lead to additional information that may add meaning to known facts, as well as establish new factual conclusions and legal contentions, all of which may lead to additions to, changes to, or variations from the information set forth herein. Accordingly, Defendants reserve the right to alter, amend, or supplement its responses as necessary. Defendants also reserve the right to amend their responses for inadvertent errors, mistakes, or admissions. In responding to all or

Loans originated by First Bank of Delaware: \$203,504

Loans originated by Plain Green: \$1,744,788

Loans originated by Great Plains: \$513,699

Lines of credit extended by MobiLoans: \$351,859

INTERROGATORY No. 3

For all ThinkCash installment loans made to Pennsylvania borrowers, provide the following information:

- (a) Loans originated, in dollars,
- (b) Numbers of loans originated,
- (c) Numbers of unique borrowers,
- (d) The average Annual Percentage Rate charged,
- (e) Amount of dollars still outstanding (regardless of identity of the current creditor), broken down into current, past due less than 61 days, and past due more than 60 days,
- (f) Amount of dollars collected to date from the borrowers, broken down by principal, interest and fees,
- (g) Total dollar amount of debt that was sold or transferred, broken down by Debt Buyer,
- (h) Total dollar amount of judgments obtained by Debt Buyers, broken down by Debt Buyer (regardless of the name of the judgment creditor).

RESPONSE:

Subject to and without waiving the General Objections set forth above and the specific objections set forth herein, Defendants respond as follows:

- (a) The total principal of ThinkCash installment loans lent by the First Bank of Delaware in Pennsylvania during the Relevant Time Period was \$23,912,900.

(b) The First Bank of Delaware originated 48,327 ThinkCash installment loans in Pennsylvania during the Relevant Time Period.

(c) Defendants do not know the exact number of unique borrowers of installment loans originated by the First Bank of Delaware in the Relevant Time Period. Approximately 33,310 of the ThinkCash installment loans during this time were coded “new” First Bank of Delaware customers as opposed to “former.”

(d) Defendants object to this subpart on the grounds that it requests information not maintained in the usual course of business.

(e) Defendants object to this subpart on the grounds that the term “outstanding” is vague and ambiguous. Notwithstanding this objection, none of the principal lent to Pennsylvania borrowers for ThinkCash installment loans originated by the First Bank of Delaware is outstanding.

(f) The total amount of dollars collected to date from Pennsylvania borrowers for ThinkCash installment loans originated by the First Bank of Delaware in the Relevant Time Period is \$19,202,086 (principal), \$18,140,682 (interest), and \$392,577 (fees). These amounts do not reflect Defendants’ income.

(g) Defendants object to this subpart on the grounds that it seeks information not within the custody and control of Defendants. Notwithstanding this objection, the First Bank of Delaware sold approximately \$2,903,100 in ThinkCash installment loans that it had originated.

(h) Defendants are without knowledge about the information requested in subpart (h).

INTERROGATORY No. 4

For each of the tree Tribal Products, provide the following information regarding loans or cash advances made to Pennsylvania borrowers:

- (a) Loans originated or cash advanced, in dollars,
- (b) Numbers of loans or cash advances originated,
- (c) Numbers of unique borrowers,
- (d) The average Annual Percentage Rate (APR) charged, and, for each year during the Relevant Time Period, the number of loans that ever had an APR of (i) 60% or less, (ii) between 60% and 80%, or (iii) between 80% and 100%.
- (e) Amount of dollars still outstanding (regardless of identity of the current creditor), broken down into current, past due less than 61 days, and past due more than 60 days,
- (f) Amount of dollars collected to date from the borrowers, broken down by principal, interest and fees,
- (g) Total dollar amount of debt that was sold or transferred, broken down by Debt Buyer,
- (h) Total dollar amount of judgments obtained by Debt Buyers, broken down by Debt Buyer (regardless of the name of the judgment creditor).

RESPONSE:

Subject to and without waiving the General Objections set forth above and the specific objections set forth herein, Defendants respond as follows:

(a) Plain Green – The total principal of loans lent by Plain Green in Pennsylvania during the Relevant Time Period was \$69,552,250.

Great Plains – The total principal of loans lent by Great Plains in Pennsylvania during the Relevant Time Period was \$14,394,800.

MobiLoans – The total amount of extensions of lines of credit by MobiLoans in Pennsylvania during the Relevant Time Period was \$25,101,953.

(b) Plain Green originated 76,278 loans in Pennsylvania during the Relevant Time Period; Great Plains originated at 23,646 loans in Pennsylvania during the Relevant Time Period; MobiLoans extended 25,324 lines of credit in Pennsylvania during the Relevant Time Period.

(c) Plain Green – Defendants do not know the exact number of unique borrowers of loans originated by Plain Green in the Relevant Time Period. Approximately 34,799 of the loans during this time were coded “new” Plain Green customers as opposed to “former.”

Great Plains – Defendants do not know the exact number of unique borrowers of loans originated by Great Plains in the Relevant Time Period. Approximately 12,009 of the loans during this time were coded “new” Great Plains customers as opposed to “former.”

MobiLoans – Defendants do not know the exact number of unique lines of credit extended by MobiLoans in the Relevant Time Period. Approximately 16,689 of the lines of credit extended during this time were coded “new” MobiLoans customers as opposed to “former.”

(d) Plain Green/Great Plains/MobiLoans – Defendants object to this subpart on the grounds that it requests information not maintained in the usual course of business.

(e) Defendants object to this subpart on the grounds that the term “outstanding” is vague and ambiguous. Notwithstanding this objection, none of the principal lent to Pennsylvania borrowers for loans originated by Plain Green or Great Plains, or for extensions of lines of credit by MobiLoans is believed to be outstanding.

(f) Plain Green – The total amount of dollars collected to date from Pennsylvania borrowers for loans originated by Plain Green in the Relevant Time Period is \$53,491,230 (principal), \$69,202,553 (interest), and \$620,178 (fees).

Great Plains – The total amount of dollars collected to date from Pennsylvania borrowers for loans originated by Great Plains in the Relevant Time Period is \$10,242,138 (principal), \$15,556,193 (interest), and \$179,412 (fees).

MobiLoans – The total amount of dollars collected to date from Pennsylvania borrowers from extensions of lines of credit by MobiLoans in the Relevant Time Period is \$19,395,176 (principal), \$23,757,643 (fees). Since MobiLoans offered lines of credit, there were no “interest” fees accumulated; the comparable information for the offered lines of credit is contained in the “fees” amount.

(g) Defendants object to this subpart on the grounds that it seeks information not within the custody and control of Defendants. Notwithstanding this objection, Plain Green sold approximately \$1,744,788 in loans that it had originated; Great Plains sold approximately \$513,699 in loans that it had originated; and MobiLoans sold approximately \$351,839 in loans that it had originated.

(h) Defendants are without knowledge about the information requested in subpart (h).

INTERROGATORY No. 5

Describe the role of any members of the Chippewa Cree Tribe (including with that description, the identity of such members, the geographical location of such person while performing that role, the source of this information and the identity of the persons at Think

during the Relevant Time Period and were responsible for servicing consumer loans originated by Plain Green or Great Plains, or the lines of credit extended by MobiLoans. Defendants entered into a “License and Support Agreement” with each of the Tribal lenders detailing the licensing of consumer lending software. Per the agreements, the loan management platforms were fully accessible by certain Think Finance personnel; when questions arose from the Tribal lenders or investors regarding specific information, Think Finance personnel would transfer data from the loan management platforms via encrypted emails, secure FTP, or via the lender portal website.

The system servers for the loan management platforms were located at Rackspace (Chicago, Illinois); SunGard (Richardson, Texas); CyrusOne (Carrollton, Texas); and the Think Finance offices (Fort Worth, Texas; systems did not actively run from here, there were only copies of the data). From Think Finance, Larry Brandt likely would be most knowledgeable about the information in this Interrogatory.

Defendants are also in the process of preparing an additional document for an upcoming production that will be responsive to this Interrogatory. Upon production, the document will be marked TF-PA-623514.

INTERROGATORY No. 13

Provide the following information regarding customer-service personnel answering phone calls from or initiating phone calls to current or prospective installment-loan or line-of- credit customers of either of the Tribal Products, as of (i) July 1, 2011, (ii) January 1, 2012, (iii) January 1, 2013, (iv) January 1, 2014, (v) January 1, 2015: (a) the Tribal Product worked on, (b) the

location of the call-center sites where they worked; (c) the number of such individuals at each of the locations; and (d) the employer(s) of such individuals.

RESPONSE:

In addition to and without waiving the General Objections set forth above, Defendants object to this Interrogatory on the grounds it is not limited to information relevant to a party's claims or defenses in this case and requests information not proportional to the needs of the case. Defendants also object to this Interrogatory to the extent it seeks information more readily obtained from other parties, specifically Plain Green, LLC, Great Plains Lending, LLC, and MobiLoans, LLC. Subject to and without waiving the foregoing specific and General Objections, Defendants respond as follows:

As described in Interrogatories 5, 6, and 7, each Tribal lender was responsible for, and had final authority over, the entirety of origination of consumer loans and extensions of lines of credit, including decisions regarding staffing of customer-service personnel. Defendants did not maintain comprehensive information about the customer-service personnel of each of the Tribal lending entities. Defendants, however, did maintain a running list of individuals who worked for Plain Green, LLC, Great Plains Lending, LLC, and MobiLoans, LLC to the best of their knowledge. A copy of this list, including job title and location where known, is attached as Attachment A.

Responding further, each Tribal lending entity contracted with firms that provided call center services as needed. Although Defendants did not maintain a comprehensive list of all

entities that may have contracted with the Tribal lenders, the following organizations are believed to have provided customer-service support for each Tribal lending entity as detailed below.

MetaSource, LLC – provided call center services for Great Plains since July 2011, for Plain Green since April 2011, and for MobiLoans since July 2013.

First Contact, LLC (d/b/a iQor) – provided call center services for Great Plains since July 2013, for Plain Green since August 2013, and for MobiLoans since August 2013.

KM2 Solutions, LLC – provided call center services for Great Plains from July 2011 to February 2013 and for Plain Green from July 2012 to June 2014.

TeleVista, Inc. – provided call center services for Plain Green from July 2012 to June 2014 and for MobiLoans from April 2013 to June 2014.

First Center, LLC (d/b/a Capital Management Services) – provided call center services for MobiLoans from June 2012 to September 2013.

INTERROGATORY No. 14

With regard to your plans in 2012 to conduct an IPO for Think Finance (referenced, for example, in Document TF-PA 310635 (at page 310640)), explain the reasons that the IPO did not take place and that the company, instead, created Elevate Credit, Inc. as a separate company. Include in the explanation, an identification of all documents and analyses related to the decision whether to conduct an IPO for Think Finance.

RESPONSE:

In addition to and without waiving the General Objections set forth above, Defendants object to this Interrogatory on the grounds it is not limited to information relevant to a party's

claims or defenses in this case and requests information not proportional to the needs of the case. Further, Defendants object to this Interrogatory on the ground that it seeks information protected by the attorney-client privilege.

INTERROGATORY No. 15

Identify each person (a) who served on the Think Finance board of directors during the Relevant Period (including the dates they served and any organizational affiliation), (b) on the initial board of directors of Elevate Credit, Inc., and (c) on the current board of directors of Elevate Credit, Inc.

RESPONSE:

In addition to and without waiving the General Objections set forth above, Defendants object to subparts (b) and (c) of this Interrogatory on the grounds that it is not limited to information relevant to a party's claims or defenses in this case, requests information not proportional to the needs of the case, and requests information more appropriately addressed to a third party. Subject to and without waiving the foregoing specific and General Objections, Defendants respond as follows:

(a) The following persons have served on the Think Finance board of directors during the Relevant Time Period:

<u>Name</u>	<u>Dates Served (during Relevant Time Period – 1/1/09-present)</u>	<u>Organizational Affiliation</u>
Kenneth E. Rees	1/1/09-5/15/15	Think Finance
Jason Harvison	1/1/09-8/24/15	Think Finance

Mike Goguen	1/1/09-5/1/14	Sequoia Capital
John Rosenberg	1/1/09-5/1/14	TCV
Robert L. Johnson	9/14/12-5/1/14	None
Tyler Head	5/20/15-9/21/15	N/A
Bob Rees	5/1/14-1/20/17	Startup Capital
Steve Shaper	1/1/09-present	N/A
Martin J. Wong	5/1/14-present	Think Finance
John Drew	5/1/14-present	TCV
Gary King	3/20/15-present	N/A
Johnny Harvison	8/24/15-present	7HBF
Ken Keenum	9/21/15-present	N/A

INTERROGATORY No. 16

Describe each of the customer acquisition channels referenced in TF-PA-041497 and 43836 (DM, LG, Affiliate, SEM, Organic, Digital), including in each description, (a) an explanation in lay terms describing how customers are routed to Think Finance products; (b) the costs associated with the channel, including the point at which the cost is incurred; (c) an identification of any business relationships regarding such channels and (d) identification of any contracts related to such business relationships.

RESPONSE:

In addition to and without waiving the General Objections set forth above, Defendants object to this Interrogatory on the grounds that it is not limited to information relevant to a party's claims or defenses in this case and requests information not proportional to the needs of the case. Subject to and without waiving the foregoing specific and General Objections, Defendants respond as follows:

The different customer acquisition channels referenced in TF-PA-041497 and - 043836 are described below in turn:

"DM" – Direct Marketing: this channel includes direct mailing of offers to apply for loans originated by Plain Green or Great Plains, or for an extension of line of credit from MobiLoans. Think Finance prepares marketing materials and sends the materials to the Tribal lenders for review and approval. After approval from the Tribal lenders, the Direct Marketing materials are mailed to potential consumers. These Direct Marketing materials

provide potential consumers with either pre-qualified offers or invitations to apply for loans or extensions of credit directly on the Tribal lenders' websites. The costs associated with the Direct Marketing channel include acquisition of potential consumer data from credit bureaus (cost incurred after final list of data approved), printing of mailing materials (cost invoiced after completion), postage (cost invoiced after completion), and logistics of the printing process (cost invoiced after completion). The Direct Marketing channel involves business relationships with credit bureaus that provide data, TransUnion, LLC, Clarity Services, Inc., printing houses that print and manage mailing logistics including Direct Marketing Solutions, Inc., and other providers of potential consumer data including Altair Data Resources, Inc. and O2 Consulting, Inc. The Direct Marketing channel relevant business relationship agreement with Direct Marketing Solutions, Inc. has been produced as TF-PA-618884.

“LG” – Lead Generator: this channel included agreements between Lead Generator entities (third party websites) and Tribal lenders to supply potential consumer leads. The Lead Generator channel directed potential consumers to Tribal lender websites using prerequisites and rules based on answers provided via loan applications completed on a given Lead Generator website. The Lead Generator channel costs included a pre-set amount per lead that the Tribal lender ultimately accepted; this cost was invoiced in bulk at the end of each monthly billing cycle to the Tribal lender. The Lead Generator channel involved business relationships between the Tribal lenders and AmOne Corp., Partner Weekly, LLC, Affiliate ROI, LLC, Credit Loan, LLC, KGM Direct, LLC, Zoom Marketing, Inc., Apex 1

Lead Generators, Inc., Ccnet, AtomicLeads.com, StoreFront Lenders, LLC, and Commission Junction, Inc.

“Affiliate” – this channel is similar to the Lead Generator channel and consisted of third party websites that pre-negotiated terms with the Tribal lenders to generate potential consumer leads. The Affiliate channel directed potential consumers to Tribal lender websites via banner ads or text links on the Affiliate website; unlike the Lead Generator channel, there was no loan application data passed from the Affiliate regarding the potential consumer. The Affiliate channel costs included a pre-set amount per lead that the Tribal lender ultimately accepted; this cost was invoiced in bulk at the end of each monthly billing cycle to the Tribal lender. The Affiliate channel involved business relationships between the Tribal lenders and AmOne Corp., Partner Weekly, LLC, Affiliate ROI, LLC, Credit Loan, LLC, KGM Direct, LLC, Zoom Marketing, Inc., Apex 1 Lead Generators, Inc., Ccnet, AtomicLeads.com, StoreFront Lenders, LLC, and Commission Junction, Inc.

“SEM” – Search Engine Marketing: this channel includes ads that appear alongside standard search results when an internet user is using a search engine. The Search Engine Marketing channel directs potential consumers to Tribal lender websites when a potential consumer clicks on the ad link in the search engine results. The Search Engine Marketing channel costs include a pre-set amount per click of the Tribal lender ad on the search engine. The cost is incurred instantly, and is invoiced on a monthly basis. The Search Engine Marketing channel involves business relationships with Google, Inc. (results shown on search engine), Bing (results shown on search engine), and Camelot Communications, LTD (an

agency that manages bidding on specific keywords for search results). There are no contracts with particular search engines or agencies; payments to the search engines and agencies are based on actual usage.

“Organic” – this channel includes natural links to and traffic to lender websites. The Organic channel directs potential consumers to Tribal lender websites from various free website traffic hits and free search engine hits. There are no costs associated with the Organic channel. The Organic channel involves no consistent business relationships. On occasion, there have been third party technical consultants, like Vertical Nerve, Inc., used to help recommend better website coding. There are no contracts related to the Organic channel.

“Digital” – this channel includes other digital advertising methods such as banner ads aimed to attract clicks to Tribal lender websites. The Digital channel directs potential consumers to Tribal lender websites via clicking on banner ads from various third party websites; unlike the Affiliate channel, the agreements to place the ads come from a separate ad platform. The Digital channel costs include a pre-set, pay-per-click arrangement, and these costs are agreed to through specific insertion orders to different ad platforms. The Digital channel involves business relationships with Google, Inc, DoubleClick, Rocketfuel, and ClearHead Group, LLC (digital ad platforms). There are no contracts related to the Digital channel; these relationships are driven on specific orders.

INTERROGATORY No. 17

State the book value of the investment fund known as GPL Servicing Ltd. (“GPLS”) as of the following dates: July 1, 2011; December 31, 2012; December 31, 2013; December 31, 2014, and, as of those same dates, identify all investors by dollar amount and percentage, and describe any liquidity restrictions, guaranteed returns, and any differences in the rights of classes of investors.

RESPONSE:

In addition to and without waiving the General Objections set forth above, Defendants object to this Interrogatory on the grounds that “book value” is vague and ambiguous and is susceptible to multiple meanings. Defendants will need clarification on its intended meaning before being able to respond to this Interrogatory with accurate information. Defendants also object to this Interrogatory’s request that Defendants “identify all investors . . .” on the grounds that it is not limited to information relevant to any party’s claims or defenses in this case and requests information not proportional to the needs of the case. In addition, Defendants do not have the information necessary to respond to the questions about the specific investors in GPLS and their respective percentages of investments.

INTERROGATORY No. 18

For each state ever classified as “No State” on the loan platform for any of the Tribal Products, or, which was ever removed from the No State list, provide the following information for each Tribal Product: (a) the date that state was added to or removed from the “No State” list; (b) the reasons for the decision not to do business or the decision to resume doing business in that state; (c) identification of any documents pertaining to that decision and (d) identification of any persons participating in the decision.

RESPONSE:

In addition to and without waiving the General Objections set forth above, Defendants object to subparts (b), (c), and (d) of this Interrogatory on the grounds that Plain Green, Great Plains, and MobiLoans are a better source for this information and the individuals most knowledgeable about this subject work (or have worked) for these entities and not Defendants. Defendants, however, did maintain a list of States where the Tribal lending entities did not offer loans on an annual basis since 2013, which is offered below in response to subpart (a). Subject to and without waiving the foregoing specific and General Objections, Defendants respond as follows:

(a) **Plain Green** – The following states were included on the “No State” list for *Plain Green LLC* at the dates noted:

As of June 15, 2016: Arkansas, Colorado, Connecticut, Georgia, Illinois, Maine, Maryland, Massachusetts, Minnesota, Montana, New Hampshire, New York, North Carolina, Oregon, Pennsylvania, Vermont, West Virginia

2015: Arkansas, Colorado, Connecticut, Georgia, Illinois, Maine, Maryland, Massachusetts, Minnesota, Montana, New Hampshire, New York, North Carolina, Pennsylvania, Vermont, West Virginia

2014: Arkansas (as of June 13, 2014), Colorado (as of June 13, 2014), Connecticut, Georgia (as of June 13, 2014), Illinois (as of June 13, 2014), Maine (as of June 13, 2014), Maryland (as of June 13, 2014), Massachusetts (as of March 24, 2014), Minnesota (as of June 13, 2014), Montana (as of June 13, 2014), New Hampshire (as of June 13, 2014), New York (as of June 13, 2014), North Carolina (as of June 13, 2014), Pennsylvania (as of November 25, 2014), Vermont (as of June 13, 2014), West Virginia (as of June 13, 2014)

2013: All states between August 22, 2013 and October 1, 2013 as well as Arkansas (April 5 – October 1, 2013) California (January 29 – February 22, 2013), Connecticut (January 29 – April 5, 2013), Georgia (January 29 – October 1, 2013), Illinois (April 5 – October 1, 2013), Louisiana (January 29 – February 22, 2013), Maryland (April 5 – October 1, 2013), Minnesota (April 5 – October 1, 2013), Missouri (April 5 – October 1, 2013), New York (April 5 – October 1, 2013), North Dakota (January 29 – April 5, 2013)

Great Plains – The following states were included on the “No State” list for *Great Plains Lending LLC* at the dates noted:

As of June 15, 2016: Arkansas, Colorado, Connecticut, Georgia, Illinois, Maine, Maryland, Minnesota, New Hampshire, New York, Pennsylvania, Vermont, West Virginia

2015: Arkansas, Colorado, Georgia, Illinois, Maine, Maryland, Minnesota, New Hampshire, New York, Pennsylvania, Vermont, West Virginia

2014: Arkansas, Colorado, Georgia, Illinois, Oklahoma, Maine, Maryland, Minnesota (as of June 13, 2014), New Hampshire (as of June 13, 2014), New York, Pennsylvania (as of November 26, 2014), Vermont (as of June 13, 2014), West Virginia (as of June 13, 2014)

2013: Maryland and all states between August 22, 2013 and October 1, 2013, after which consumer loans were extended in all states except for Arkansas, Colorado, Georgia, Illinois, Oklahoma, Maine, Maryland, New York

MobiLoans – The following states were included on the “No State” list for ***MobiLoans LLC*** at the dates noted:

As of June 15, 2016: Arkansas, Colorado, Connecticut, Georgia, Illinois, Louisiana, Maine, Maryland, Massachusetts, Minnesota, New Hampshire, New York, Pennsylvania, Vermont, West Virginia

2015: Arkansas, Colorado, Connecticut (as of January 7, 2015), Georgia, Illinois, Louisiana, Maine, Maryland, Massachusetts, Minnesota, New Hampshire, New York, Pennsylvania, Vermont, West Virginia

2014: Arkansas, Colorado, Georgia, Illinois, Louisiana, Maine, Maryland, Massachusetts (April 2, 2014), Minnesota, New Hampshire, New York, Pennsylvania (as of November 25, 2014), Vermont (June 13, 2014), West Virginia

2013: All states between August 22, 2013 and October 1, 2013, after which consumer loans were extended in all states except for Arkansas, Colorado, Georgia, Illinois, Louisiana, Maine, Maryland, Minnesota, New Hampshire, New York, West Virginia

INTERROGATORY No.19

During the Relevant Period, identify which of the following persons or entities have held stock in or made loans to Think Finance, Inc., and for each, state (i) the applicable period of time, (ii) the amount of shares owned or loans made, and (iii) the amount of outstanding shares or loan balances currently: (a) Victory Park (b) Alonzo Primus, (c) Steven Haynes or Haynes Investments, (d) Ken Rees, (e) Jason Harvison or other members of the Harvison family, (f) Chris Lutes, (g) Robert L. Johnson, (h) Princeton Alternative Funding or Fintech Financial, LLC, (i) Brett Horrocks, or (j) Mark Curry.

RESPONSE:

In addition to and without waiving the General Objections set forth above, Defendants object to this Interrogatory on the grounds that it is not limited to information relevant to a party's claims or defenses in this case and requests information not proportional to the needs of the case. Subject to and without waiving the foregoing specific and General Objections, Defendants respond as follows:

- (a) Victory Park – none.
- (b) Alonzo Primus – none.
- (c) Steven Haynes / Haynes Investments – none.

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

COMMONWEALTH OF PENNSYLVANIA *
BY ATTORNEY GENERAL JOSH *
SHAPIRO, *
Plaintiff, *

VS. * Civil Action
* No. 14-7139-JCJ
THINK FINANCE, INC., et al., *
Defendants. *

ORAL AND VIDEOTAPED DEPOSITION OF
KENNETH REES
MAY 8, 2018

DEPOSITION of KENNETH REES, produced
as a witness at the instance of the Plaintiff, and
duly sworn, was taken in the above-styled and
numbered cause on the 8th day of May, 2018, from
9:08 a.m. to 5:46 p.m., before Christy R. Sievert,
CSR, RPR, in and for the State of Texas, reported by
machine shorthand, at the Fort Worth Club, 306 West
7th Street, Fort Worth, Texas 76102, pursuant to the
Federal Rules of Civil Procedure and the provisions
stated on the record or attached hereto.

A P P E A R A N C E S
(continued)

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1 THE VIDEOGRAPHER: We are now on the
2 record for the videotaped deposition of Kenneth
3 Rees. The time is 9:08 a.m., May 8, 2018, in the
4 matter of the Commonwealth of Pennsylvania vs. Think
5 Finance Incorporated, et al., Case No. 14-7139-JCJ,
6 being held in the United States District Court for
7 the Eastern District of Pennsylvania.

8 The court reporter is Christy Sievert.
9 The videographer is Gus Phillips. Both are
10 representatives of Kaplan, Leaman & Wolfe Court
11 Reporting.

12 Will counsel please state their
13 appearances for the record.

14 MR. ACKELSBURG: Irv Ackelsberg for
15 the Commonwealth of Pennsylvania.

16 MR. GROGAN: John Grogan, also for the
17 Commonwealth.

18 MR. MIRARCHI: Saverio Mirarchi for
19 the Commonwealth of Pennsylvania.

20 MR. DAUGHERTY: Patrick Daugherty on
21 behalf of National Credit Adjusters.

22 MR. HAWS: Matthew Haws on behalf of
23 the Victory Park defendants.

24 MR. SHAPIRO: Dan Shapiro for the
25 Victory Park defendants.

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1 MR. SHELDON: Matt Sheldon for the
2 Think Finance defendants.

3 MR. SCHEFF: Richard Scheff for Ken
4 Rees.

5 KENNETH REES
6 having been first duly sworn,
7 testified as follows:

8 EXAMINATION

9 BY MR. ACKELSBURG:

10 Q. Mr. Rees, you have been deposed before?

11 A. I have.

12 Q. Okay. So I'm sure you understand how this
13 works, but just to confirm that you do know the
14 ground rules, I want to just go over a few things
15 that I'm sure are familiar to you.

16 You see that there's a videographer.
17 There's also a court reporter. The official record
18 of what happens today is the -- is going to be the
19 written transcript. The reason I tell you that is
20 just to caution you that gestures -- verbal
21 responses -- don't register on the -- on the written
22 record, so we need -- we need verbal responses from
23 you.

24 And I'll do my best -- and the other thing
25 about the written record is that it's very hard for

1 her when we're all talking over one another, which
2 I'm as guilty as anybody of. So we also have to do
3 our best to try to wait until whoever is talking is
4 finished before we proceed with my question or your
5 answer. Do you understand?

6 A. Uh-huh, yes.

7 Q. Okay. See, that was -- see, it's a trick
8 question.

9 So the -- and the result of what happens
10 here is that there is this transcript, and the
11 transcript could conceivably be used in further
12 proceedings in this case. Do you understand that?

13 A. Yes.

14 Q. Okay. And you're under oath. The oath
15 that you just got -- that you just took is -- means
16 that what happens here is the equivalent of you
17 testifying in a federal courtroom. Do you
18 understand?

19 A. Yes.

20 Q. Okay. If you don't understand the
21 question, it's perfectly fine to ask for
22 clarification. It would be helpful if there's
23 something in the question that you don't understand,
24 to tell me what about the question you didn't
25 understand. I'll try to do a better job. If you

1 mentioned that you've been deposed before.

2 A. Uh-huh (affirmative response).

3 Q. Can you let -- let us know -- and I don't
4 really care about your personal life, if there have
5 been car accidents or bike accidents, or things like
6 that. But just with regard to your professional
7 life, what -- have some of those depositions been
8 with regard to the business side of your life?

9 A. Yes.

10 Q. Okay.

11 A. One was related to the CFBS CID into Think
12 Finance, and the other was related to a -- a lawsuit
13 related to a board member of ours. So I was a
14 witness in that lawsuit. And potentially one
15 related to employment law. I'm not sure if that
16 really happened.

17 Q. Now, the lawsuit, was that the Steve
18 Schafer lawsuit?

19 A. Yes.

20 Q. What was that lawsuit about?

21 A. There was a dispute over compensation
22 between Steve and the -- the company that he was
23 formerly a part of. And he -- we had attempted to
24 do a business deal with him, and for one reason or
25 another, I was a witness in that.

1 don't know the answer, "I don't know" is perfectly
2 fine as well.

3 Now, your lawyer will, undoubtedly, be
4 objecting for a good part of today. But as I'm sure
5 he's told you, unless he specifically directs you
6 not to answer, you still have to answer the
7 question. That's one difference between a
8 deposition and the courtroom, there's no judge here
9 to rule on objections. So unless he tells you not
10 to answer, you still have to answer the question,
11 notwithstanding whatever -- there may be objections
12 all up the table, you still have to answer the
13 question. Do you understand that?

14 A. Yes.

15 Q. Okay. We will take many breaks. If you
16 need a break outside of when the lawyers call a
17 halt, just let us know. I would only ask you to
18 finish whatever question was pending at the time,
19 and then we can break and you can go out.

20 Lastly, is there any reason, illness,
21 hearing disorder, medication, lack of sleep,
22 concussion, anything like that, why you can't give
23 this deposition your full attention today?

24 A. No.

25 Q. Okay. So the first question is, you

1 Q. I see. But you weren't adverse to Steven
2 Schafer?

3 A. No, not at all.

4 Q. He's still -- he's still on your board,
5 right?

6 A. Yeah.

7 Q. Okay. And the CFPB CID investigation, when
8 were you deposed in that, how long ago?

9 A. I don't know the year. It was -- I'd be
10 guessing.

11 Q. And after the deposition, did you get a
12 chance to review the transcript to make sure your --
13 that they accurately transcribed your answers to the
14 questions?

15 A. I did not review the transcript.

16 Q. Did -- so did you ever see a transcript?

17 A. It was available to me, but I didn't -- I
18 had other people review it.

19 Q. Meaning your lawyers?

20 A. Uh-huh (affirmative response).

21 Q. Okay. Do you have that with you today?

22 A. No.

23 Q. Okay. Did -- and you didn't -- you've
24 never reviewed that transcript?

25 A. I don't believe so.

1 Q. Okay.

2 MR. ACKELSBERG: Richard, I just --
3 just for the record, I mean, just we mentioned this
4 during the Harvison deposition, we would like copies
5 of the depositions.

6 MR. SCHEFF: And if my recollection is
7 correct, I think that we've not been supplied with
8 an official transcript by the CFPB. We created our
9 own. And I think the CFPB regulations prevent us
10 from turning it over. I'll review those, as we said
11 we would. I always thought and, you know, I'll ask
12 you, as part of the MOU, as part of the cooperation
13 that you've had with the CFPB, I assumed you have
14 the transcripts of Harvison and Rees.

15 MR. ACKELSBERG: All right. Well,
16 we'll talk about it.

17 MR. SCHEFF: Okay.

18 BY MR. ACKELSBERG:

19 Q. I want to just go over your very impressive
20 resumé just a little bit. I note that you graduated
21 Reed College in mathematics. Is that right?

22 A. That's right.

23 Q. And the University of Chicago MBA program;
24 is that right?

25 A. Yes.

1 Q. So I have to ask you this, just out of
2 curiosity, how did a graduate of one of the
3 country's most prestigious liberal arts colleges and
4 MBA programs end up as an online subprime lender?

5 MR. SCHEFF: Object to the form.

6 A. Well, actually, I can walk you through my,
7 sort of, career. After business school, I became a
8 management consultant working with -- first it was
9 Booz Allen Hamilton, then -- then CSC. I did a lot
10 of work in financial services, including work for
11 Wells Fargo.

12 And, actually, the thing that got me
13 started on this was some work I did in the Wells
14 Fargo branches where we were doing some branch
15 productivity work, and the staff kept talking about
16 lobby trash and how we need to get rid of the lobby
17 trash. And I realized it wasn't trash, it was the
18 people cashing checks that were underserved by
19 banks.

20 And it sort of signaled to me that there
21 was a vast unmet need for financial services that
22 banks were backing away from. I was intrigued with
23 the idea of how technology could serve that.

24 So that's what led me first to the world
25 of -- of sort of online check cashing, which we --

1 there was a couple of companies in a row, including
2 the one that I started in Dallas called CashWorks
3 where I -- we helped consumers cash their checks in
4 convenience stores and grocery stores and put the
5 proceeds on -- on prepaid debit cards so they would
6 be safer for the customer. That company was bought
7 by GE.

8 Then after that -- that company was sold,
9 I was looking for what to do next. And one of the
10 board members of that company, CashWorks, had
11 started up a company called PayDay One. It was the
12 company that ultimately became Think Finance.
13 And --

14 Q. Would that be Mr. Stinson?

15 A. That was Mr. Stinson, that's right.

16 And he had gotten the company to -- to
17 profitability. It was in growth mode, trying to
18 decide whether he wanted to sell the company or
19 continue to grow it. He was an older Fort Worth
20 businessman, didn't think that he wanted to
21 personally run it. Thought I was a decent CEO
22 and -- and asked if I would first step in as the
23 president under him, and then, eventually, he sort
24 of stepped off and asked if I would take over as CEO
25 and chairman of the board.

1 Q. Well, let me go back just a little bit to
2 the period at Wells Fargo. What time period were
3 you there?

4 A. So I was a management consultant from -- I
5 graduated business school in 1990. So I would have
6 been a management consultant until about '98. '97,
7 '98. Then started a -- or didn't start, joined a
8 business -- and that's actually where I met Mike
9 Stinson. He was the one who had started this.

10 Q. That's the CashWorks, or is that --

11 A. It's actually a precursor to CashWorks. It
12 was originally called Mr. Payroll when I -- when I
13 joined, and then it was renamed InnoVentry. And it
14 was -- ended up being a joint venture between Wells
15 Fargo and CashWorks, kind of a strange joint venture
16 between a bank and a -- and a pawnshop. But with
17 the idea of using, again, technology and things like
18 facial biometrics to better serve an underserved
19 customer.

20 Q. How does -- what does facial biometrics
21 have to do with check cashing? I'm just curious.

22 A. You have these sort of souped up ATMs in
23 grocery stores, and so the facial biometrics is a
24 way to identify the customer and to prevent fraud.

25 Q. When you were a management consultant at

1 Wells, what --
 2 A. And just to be clear, I was a management
 3 consultant with -- with CSC and was doing a project
 4 for Wells Fargo.
 5 Q. I see. So your employer was CSC, but for
 6 those roughly eight years, the project was at Wells
 7 Fargo?
 8 A. No. To be clear, I did many projects. The
 9 project that really made me think about the needs of
 10 underserved Americans for financial services was
 11 some work I did for Wells Fargo. And I did --
 12 Q. And what specifically was that work that
 13 you were doing for Wells Fargo?
 14 A. It was a -- the project that I was
 15 referring to was a branch productivity project, how
 16 to be able to serve more customers in the branches
 17 with -- with lower costs. I did a number of
 18 projects for Wells Fargo, though, over the years.
 19 But they were not my only client at -- at CSC. I
 20 had clients including Citibank in Singapore,
 21 chemical plants in Korea, and power plants in
 22 Canada.
 23 So it was pretty wide ranging, but -- but
 24 as I said, the -- you asked specifically how did I
 25 get into this space. It was some work I did as a

1 consultant working for Wells Fargo bank that -- that
 2 really sent me down this path and gave me a sort of
 3 lifelong passion about serving underserved
 4 consumers.
 5 Q. So when you -- now, Mr. Stinson was the
 6 owner of both CashWorks and PayDay One?
 7 A. No, sorry, the -- a little bit confusing.
 8 When I left management consulting, it was to join a
 9 company that Mike had started, Mike Stinson had
 10 started called Mr. Payroll. I was the COO of that
 11 company. That company ultimately failed, and I
 12 started up a company called CashWorks.
 13 Q. So that -- you started it?
 14 A. I started that. Mike was on -- I asked
 15 Mike to be on my board of that company. I -- I
 16 thought he was a very good businessman. And then,
 17 as I said, after I sold CashWorks, then Mike, who
 18 had started up another business called PayDay One at
 19 the time, asked me if I would join PayDay One.
 20 Q. All right. So the -- you mentioned a
 21 little bit about CashWorks, that it had to do with
 22 check cashing and retail establishments, right?
 23 A. Right.
 24 Q. And Mr. Payroll, what was that? What was
 25 the service that Mr. Payroll --

1 A. Yeah, Mr. Payroll was --
 2 Q. -- tried but failed?
 3 A. Yeah, that was check cashing in,
 4 essentially, souped up ATMs. The problem with that
 5 product was the ATMs were very expensive on both to
 6 buy -- they were \$60,000 devices -- and then very
 7 high servicing costs. So the business model just
 8 didn't ultimately work.
 9 CashWorks was really serving the same
 10 customer need of check cashing customers that wanted
 11 the convenience of being in -- in grocery stores and
 12 retailers as opposed to going to an establishment
 13 with brick and mortar and bullet proof glass and
 14 things like that.
 15 The difference is we used point-of-sale
 16 terminals. So it was a lower cost. And we funded
 17 onto prepaid debit cards, so it was more -- safer
 18 for consumers. They didn't walk away from the
 19 establishment with a bunch of cash in their hands,
 20 they had the plastic.
 21 Q. So they would come in with, like, a
 22 paycheck, and they would walk out with a prepaid
 23 debit card?
 24 A. Right.
 25 Q. Okay. Now, the company that went -- let's

1 move to PayDay One. And you began there in what
 2 year?
 3 A. 2004.
 4 Q. And you joined as CEO?
 5 A. No, I joined as president. The company had
 6 been started in 2001. I was asked to join in 2004.
 7 I worked for Mike as the president, and he was the
 8 CEO and chairman of the board.
 9 Q. And when was it that -- that PayDay One
 10 changed its name?
 11 A. I don't remember the exact year. I
 12 would -- it was in the range of 2006 to 2008.
 13 Q. So, roughly, the time that the -- that the
 14 venture with First Bank of Delaware was happening,
 15 right?
 16 MR. SCHEFF: Object to the form.
 17 BY MR. ACKELSBURG:
 18 Q. So, roughly, that same time period?
 19 MR. SCHEFF: Object to the form.
 20 A. I'm just trying to remember what the timing
 21 was. I -- I think that's correct.
 22 BY MR. ACKELSBURG:
 23 Q. Yeah. And so the product, the installment
 24 loan product was called Think Finance, right?
 25 And -- you've got to answer the question.

<p style="text-align: right;">Page 21</p> <p>1 MR. SCHEFF: He wasn't sure whether</p> <p>2 you were finished with your question. So is</p> <p>3 there --</p> <p>4 BY MR. ACKELSBURG:</p> <p>5 Q. The name of the product -- this is -- this</p> <p>6 is a question. The name of the -- it's called</p> <p>7 leading questions. So sometimes it may not sound</p> <p>8 like a question, but I -- it is intended as a</p> <p>9 question.</p> <p>10 So the name of the product was Think --</p> <p>11 ThinkCash, correct?</p> <p>12 A. The name of the product was ThinkCash. The</p> <p>13 reason for the -- for the change in the name of the</p> <p>14 business was it -- when the company was started by</p> <p>15 Mike Stinson, it was an online payday loan company.</p> <p>16 It was actually a discounted payday loan using</p> <p>17 technology, but it was clearly indicated by the name</p> <p>18 this was a payday loan product. We had some</p> <p>19 concerns with that name, so we were -- we were</p> <p>20 already anticipating a different name change. But</p> <p>21 Think -- ThinkCash was the product name and the</p> <p>22 company name, but it was really the signal that this</p> <p>23 was not a company that was about payday loans; this</p> <p>24 was a company about providing access to credit in a</p> <p>25 variety of different ways.</p>	<p style="text-align: right;">Page 23</p> <p>1 after I got on board and we started doing more focus</p> <p>2 groups with customers.</p> <p>3 But -- but to your -- to your exact point,</p> <p>4 yes, the idea of ThinkCash was to move away from the</p> <p>5 idea of it being a payday loan company and it being</p> <p>6 a financial services company serving nonprime</p> <p>7 customers.</p> <p>8 Q. Then at some point, I believe -- well, I</p> <p>9 think -- I think it was Chris Lutes who told us</p> <p>10 this, but let me ask you: There was a point where</p> <p>11 the venture capital came in and enabled you to pay</p> <p>12 off Stinson and the early -- the early investors; is</p> <p>13 that right?</p> <p>14 MR. SCHEFF: Object to the form.</p> <p>15 You can answer the question.</p> <p>16 A. So when I came on board, I thought it was</p> <p>17 important to have a more professional equity</p> <p>18 sponsorship for the company. The company was cash</p> <p>19 flow positive at the time. Typically, when venture</p> <p>20 capitalists put in their money, it goes to fund</p> <p>21 operations. In this case, when they put in their</p> <p>22 money, it was primarily to -- to pay the founders of</p> <p>23 the company, Stinson and Harvison. But they -- they</p> <p>24 didn't cashout, by any stretch of the imagination,</p> <p>25 but the funds that came in were really used to buy</p>
<p style="text-align: right;">Page 22</p> <p>1 Q. And at that point the name changed,</p> <p>2 there -- there, basically, were two products, it was</p> <p>3 PayDay One and ThinkCash, right?</p> <p>4 A. Right.</p> <p>5 Q. Okay. And the ThinkCash product felt, in</p> <p>6 your mind, as sort of closer to the direction you</p> <p>7 wanted to take the company at that point; am I</p> <p>8 right?</p> <p>9 MR. SCHEFF: Object to the form.</p> <p>10 You can answer.</p> <p>11 BY MR. ACKELSBURG:</p> <p>12 Q. As opposed to traditional payday loans?</p> <p>13 MR. SCHEFF: Object to the form.</p> <p>14 A. Yeah, we -- we felt that there was -- and</p> <p>15 we were learning more about the customer needs, and</p> <p>16 what was interesting to us customers were looking to</p> <p>17 be able to repay their loans over longer periods of</p> <p>18 time than a traditional payday loan, which is a very</p> <p>19 short-term payment.</p> <p>20 BY MR. ACKELSBURG:</p> <p>21 Q. Usually it's two-weeks, right?</p> <p>22 A. Usually -- yeah, on the next paycheck,</p> <p>23 right. So we -- we were anticipating moving into</p> <p>24 other forms of credit, installment loans, lines of</p> <p>25 credit were all sort of anticipated pretty early</p>	<p style="text-align: right;">Page 24</p> <p>1 parts of the ownership of Stinson and 7HBF.</p> <p>2 BY MR. ACKELSBURG:</p> <p>3 Q. 7HBF being the Harvison family fund, right?</p> <p>4 A. That's correct.</p> <p>5 Q. So when you arrived at PayDay One, was --</p> <p>6 was Jason Harvison already -- already there?</p> <p>7 A. He was.</p> <p>8 Q. Okay. And what was his job there when you</p> <p>9 arrived?</p> <p>10 A. I actually don't know exactly what he was</p> <p>11 working on. There was only about 20 people when I</p> <p>12 joined, and oftentimes people had a number of hats.</p> <p>13 But he was someone who impressed me as a -- as a</p> <p>14 talented young guy, and it ended up being something</p> <p>15 he took on a number of roles within the company from</p> <p>16 compliance roles to operations to product</p> <p>17 leadership.</p> <p>18 Q. I've read some things that you've written</p> <p>19 talking about the path from startup to -- to a</p> <p>20 public company, which is, obviously, a very</p> <p>21 impressive path. What -- in your -- in your own</p> <p>22 mind, how long did the startup -- the startup phase</p> <p>23 last? What was the -- I mean, I assume when you</p> <p>24 were at 20 people there, that it's still in startup</p> <p>25 mode. At what point, in your mind, was it something</p>

<p style="text-align: right;">Page 25</p> <p>1 other than a startup?</p> <p>2 A. I don't mean to be, you know, flippant in</p> <p>3 the response, but I -- I feel in many ways the</p> <p>4 company is still a startup. We still are constantly</p> <p>5 reevaluating. When I think about what a startup</p> <p>6 does, it's trying lots of things. It's focused on</p> <p>7 growth. It's looking for -- for new opportunities.</p> <p>8 And that's something that's been actually fairly</p> <p>9 consistent in the company.</p> <p>10 So it's been a company that I -- I find is</p> <p>11 interesting in just how much innovation it's been</p> <p>12 sort of doing from the history of the company,</p> <p>13 whether even before me it was the first one to use</p> <p>14 technology to have a fully automated loan</p> <p>15 transaction in this space. They had already done</p> <p>16 a -- a licensing deal with a third-party bank before</p> <p>17 I came on board. We expanded that.</p> <p>18 And so it's been sort of a constant</p> <p>19 history, I think, of -- of being willing to grow and</p> <p>20 try and advance. And so I don't know in my mind</p> <p>21 that there is a change between startup and stable</p> <p>22 because it has seemed to be that -- that type of a</p> <p>23 high growth, high innovation business from -- from</p> <p>24 very early on before I joined.</p> <p>25 Q. Which was the -- I'm forgetting. What was</p>	<p style="text-align: right;">Page 27</p> <p>1 was about a year after I joined. I think Mike was</p> <p>2 sort of comfortable with my management style and</p> <p>3 thought that I could lead the company that he had --</p> <p>4 he had established and, you know, had, justifiably,</p> <p>5 a lot of pride and personal ownership in.</p> <p>6 Q. And what about -- at some point, you became</p> <p>7 chairman of the board as well, right?</p> <p>8 A. Yes.</p> <p>9 Q. And when did that happen? Could that have</p> <p>10 been when the venture capital came in, like, roughly</p> <p>11 when -- when Stinson was -- the Stinson debt and the</p> <p>12 Harvison debt was paid off or. . .</p> <p>13 MR. SCHEFF: Object to the form.</p> <p>14 A. I just don't know exactly when that was.</p> <p>15 I'm sorry.</p> <p>16 BY MR. ACKELSBURG:</p> <p>17 Q. But by the time you were entering into the</p> <p>18 deal with First Bank of Delaware in 2007, you were</p> <p>19 also chairman of the board at that point, right?</p> <p>20 A. By 2007, I would have been chairman of the</p> <p>21 board. I don't know, for instance, whether I was</p> <p>22 when we got TC funding. I just don't remember that.</p> <p>23 Q. Okay. Now, what about -- do you have any</p> <p>24 professional -- are there any professional</p> <p>25 organizations you're -- you're involved in?</p>
<p style="text-align: right;">Page 26</p> <p>1 the bank arrangement before First Bank of Delaware?</p> <p>2 A. It was before my time. It was a bank, I</p> <p>3 believe, called First Bank of Las Vegas, strangely</p> <p>4 not -- not in Las Vegas, you know, in New Mexico.</p> <p>5 Q. Well, that's all right. First Bank of</p> <p>6 Delaware wasn't much in Delaware either.</p> <p>7 MR. SCHEFF: Object to the form to the</p> <p>8 extent that's a question.</p> <p>9 BY MR. ACKELSBURG:</p> <p>10 Q. Go ahead. So. . .</p> <p>11 A. And, yeah, there was a -- I don't know much</p> <p>12 about the -- the transaction because before -- it</p> <p>13 was before my time, but it was a -- a partnership</p> <p>14 with a bank to license them technology to serve the,</p> <p>15 you know, customers with credit.</p> <p>16 Q. Also payday loans were at that time?</p> <p>17 A. Again, I don't know for a fact whether it</p> <p>18 was payday loans or installment loans. It was one</p> <p>19 of those two. I don't think it was a line of credit</p> <p>20 product.</p> <p>21 Q. Okay. So at what point did you become CEO</p> <p>22 of the company that eventually was called Think</p> <p>23 Finance?</p> <p>24 A. Yeah, I think it was about a year after I</p> <p>25 joined. I don't know the exact date, but I think it</p>	<p style="text-align: right;">Page 28</p> <p>1 A. I'm on the board of the Online Lenders</p> <p>2 Association, and I think that's -- that's about it.</p> <p>3 Q. And how long have you been associated with</p> <p>4 the online lenders -- is it the association or</p> <p>5 alliance?</p> <p>6 A. I think it is the Online Lenders Alliance.</p> <p>7 Thank you.</p> <p>8 Q. Okay.</p> <p>9 A. I don't know exactly when I joined. I</p> <p>10 think we were asked to join, I'm going to guess, it</p> <p>11 was probably '07, '08. I can't remember exactly</p> <p>12 when.</p> <p>13 Q. And how long have you been on the board?</p> <p>14 A. It would have been since we joined as a</p> <p>15 member.</p> <p>16 Q. And what's the -- what's the mission of</p> <p>17 OLA?</p> <p>18 A. It's a trade organization for online</p> <p>19 lenders to help them under- -- help both promulgate</p> <p>20 best practices as well as for government affairs</p> <p>21 activities.</p> <p>22 Q. And are they all -- strike that.</p> <p>23 All right. How would you describe your</p> <p>24 leadership style?</p> <p>25 MR. SCHEFF: You're talking about</p>

<p style="text-align: right;">Page 29</p> <p>1 during the Think Finance period, I presume? Because</p> <p>2 I don't know whether it's changed and who knows.</p> <p>3 BY MR. ACKELSBURG:</p> <p>4 Q. Yeah, that's fine. We can -- during your</p> <p>5 years --</p> <p>6 MR. SCHEFF: Confine your answers to</p> <p>7 during the Think -- when you were associated with --</p> <p>8 BY MR. ACKELSBURG:</p> <p>9 Q. That's all we've been talking about at the</p> <p>10 moment. So, sure, I'm happy to confine it to Think</p> <p>11 Finance.</p> <p>12 MR. SCHEFF: Thank you.</p> <p>13 BY MR. ACKELSBURG:</p> <p>14 Q. During your years at Think Finance, how</p> <p>15 would you describe your leadership style?</p> <p>16 A. I have been asked that before, and I always</p> <p>17 struggle to give an answer for it. I've never been</p> <p>18 able to articulate that. I mean, I think what do</p> <p>19 I -- what drives me as a leader is about -- we have</p> <p>20 our -- our four values, and I think four values in a</p> <p>21 company ultimately come from what the CEO thinks.</p> <p>22 So we've always said that we want to think</p> <p>23 big. So I like innovation, and I want sort of</p> <p>24 people who work for me to be driving for -- for new</p> <p>25 things and trying new things. Sort of raise the</p>	<p style="text-align: right;">Page 31</p> <p>1 with a little bit. But I'm just curious, this --</p> <p>2 this 3 billion figure, like, where did that come</p> <p>3 from?</p> <p>4 MR. SCHEFF: Let's -- we're not</p> <p>5 talking about Elevate, so let's move on. We're not</p> <p>6 talking about Elevate's business. We're talking</p> <p>7 about Think Finance, and --</p> <p>8 MR. ACKELSBURG: I didn't --</p> <p>9 MR. SCHEFF: -- he was -- he was</p> <p>10 referring to Elevate.</p> <p>11 MR. ACKELSBURG: I didn't -- there was</p> <p>12 no question about --</p> <p>13 MR. SCHEFF: He referred to it in his</p> <p>14 answer, and that's what it is. So let's move and</p> <p>15 just focus on Think Finance.</p> <p>16 BY MR. ACKELSBURG:</p> <p>17 Q. So you -- I mean, I think I saw that in --</p> <p>18 that figure \$3 billion saved, I mean, there are</p> <p>19 documents to that from the Think period as well.</p> <p>20 That's not a new concept savings, is it?</p> <p>21 MR. SCHEFF: Mr. Rees, confine your</p> <p>22 answer to Think Finance, please. Thank you.</p> <p>23 MR. ACKELSBURG: What? I'm just</p> <p>24 curious, what --</p> <p>25 MR. SCHEFF: Because this case isn't</p>
<p style="text-align: right;">Page 30</p> <p>1 bar. So I want to see people work on incrementally</p> <p>2 improving all aspects of the business.</p> <p>3 Win together. So we feel very -- very</p> <p>4 strongly about the lack of functional hier-- of</p> <p>5 barriers and the lack of hierarchy in the company.</p> <p>6 One of the reasons why, for instance, you know, as</p> <p>7 part of my leadership style I don't just look to the</p> <p>8 people below me. I do like to listen pretty broadly</p> <p>9 what's going on in the company at all levels.</p> <p>10 And I think do the right thing is the</p> <p>11 other thing that's part of the -- the -- are the</p> <p>12 values of the company I feel very strongly about. I</p> <p>13 want to see a high level of ethics. It's</p> <p>14 something -- you know, I've been proud of the</p> <p>15 company. I think we have -- you know, instead of</p> <p>16 the -- you know, the old line payday loans, we have</p> <p>17 moved away from that. We have saved customers, you</p> <p>18 know, our products, \$3 billion over the -- and this</p> <p>19 is for the -- for the Elevate world.</p> <p>20 But have really sort of held ourselves to</p> <p>21 trying to do things in a better way. So I don't</p> <p>22 know if that fully answers your question, but I</p> <p>23 think values of the company are a reflection of the</p> <p>24 leader of the company.</p> <p>25 Q. And I do want to -- I want to follow up</p>	<p style="text-align: right;">Page 32</p> <p>1 about Elevate. And, again, if you want to go talk</p> <p>2 to Judge Joiner about that, I'm happy to do that,</p> <p>3 but we're not talking about Elevate. If you want to</p> <p>4 talk about the spinoff, we're -- I think that's fair</p> <p>5 game. But we're not talking about Elevate's present</p> <p>6 business. We're talking about Think Finance.</p> <p>7 That's what your lawsuit is about, and so that's</p> <p>8 what you need to focus on.</p> <p>9 BY MR. ACKELSBURG:</p> <p>10 Q. Mr. Rees, when you were at -- I mean, these</p> <p>11 values that you told us about, the four values,</p> <p>12 those are values that you had when you were at Think</p> <p>13 Finance, right? Can you -- right?</p> <p>14 A. Yes.</p> <p>15 Q. And they were communicated to the workers</p> <p>16 at Think Finance?</p> <p>17 A. Yes.</p> <p>18 Q. Okay. The \$3 billion saved, that --</p> <p>19 from -- that number was used during the Think</p> <p>20 Finance period, wasn't it?</p> <p>21 A. Actually, that number wasn't used, but we</p> <p>22 were through -- through the, really, latter part of</p> <p>23 the Think period that I was there, we were really</p> <p>24 focused on this idea of how much we saved customers</p> <p>25 over payday loans.</p>

1 Q. And how do you make that calculation?
2 Whether it's 3 billion that you're quoting at
3 Elevate or some other number that you quoted
4 earlier, what -- how do you come up with that
5 number?

6 A. So the -- we used the CFPB's assessment of
7 what the average effective APR of a payday loan was
8 and then looked at the products that were originated
9 either directly by us or by partners using our
10 technology platform. Looked at the difference
11 between the effective APR of those products and the
12 effective APR of payday loans, and that's how we
13 calculated them.

14 Q. And then just multiply that times the loan
15 volume?

16 A. Exactly.

17 Q. Okay. I see.

18 You mentioned you've been asked about your
19 management style before. Do you remember the -- the
20 interview that you did with Adam Bryant of the New
21 York Times in 2012, "How to Become a Bus Driver, Not
22 a Bulldozer"? Do you remember that?

23 A. I do.

24 Q. Okay. I want to show you a copy of that.

25 MR. ACKELSBURG: Why don't we mark

1 down hierarchy is to be able to listen to challenges
2 as well as to do a good job of communicating what we
3 are trying to achieve as a company.

4 Q. The title, which -- the title of the
5 article which refers to, I guess, a comment you made
6 in the -- in the interview itself about trying to
7 become more a bus driver than a bulldozer. I take
8 it that there's -- that sometimes just from that --
9 from that description, that you've had a hard time
10 sort of not getting too involved in the details and
11 trying to look more in the big picture. Is that --
12 is that what you're trying to communicate with this
13 bulldozer and bus driver idea?

14 MR. SCHEFF: Object to the form.

15 You can answer the question.

16 A. You know, working for a CEO that doesn't
17 focus on building the team is ultimately, you know,
18 super frustrating for people. And I have evolved as
19 a CEO. I think early days, I was more -- I didn't
20 listen as much to my team, and it's something that I
21 have worked on a lot. I've had coaches that have
22 worked on this with me. And it's -- that's been
23 sort of the theme of trying to be a better leader is
24 to balance, you know, making sure people understand
25 what we are trying to do but also doing a better job

1 this as Plaintiff's Exhibit 272.

2 (Exhibit No. 272 marked.)

3 A. Okay.

4 BY MR. ACKELSBURG:

5 Q. All right. So my first question is just,
6 how in the world did you manage to get the New York
7 Times to interview you about your management style?

8 A. We had a PR team that we were working with,
9 and they were, obviously, looking for coverage of
10 the company and me as the leader and were able to
11 secure this.

12 Q. So, you know, there's reference to -- you
13 know, and this follows up for some of the things you
14 just told us about -- about trying to diminish
15 hierarchy a little bit within the -- within the
16 culture of the company, right? And this "Cookies
17 With Ken," did that -- did that -- something like
18 that happen throughout your years with Think?

19 A. Absolutely, yes.

20 Q. And the quarterly town hall meetings?

21 A. Yes.

22 Q. And the -- so the idea was to really
23 inspire people and to -- but to also be accessible
24 to your -- to your employees?

25 A. Yeah, I mean, think the point of breaking

1 of listening and delegating and letting people run
2 their pieces of the business.

3 BY MR. ACKELSBURG:

4 Q. What about -- how would you -- we have been
5 talking about your management style, your leadership
6 style. But what would you describe as the core
7 responsibilities of the CEO, at least -- and I'm not
8 asking for a business school answer. I'm asking for
9 just you, Ken Rees, within the Think -- Think
10 Finance period, what did -- just in terms of your
11 work there, what were your core responsibilities?

12 A. I mean, I think, ultimately, the CEO is
13 responsible for building a team that can -- can
14 deliver the -- the growth and objectives of the
15 business, getting that team to jointly agree on a
16 direction and work effectively towards -- towards
17 achieving that direction.

18 So that's where, I think, that the bus
19 dozer -- excuse me -- the bus driver comes into
20 place, that that's -- that's -- I think the number
21 one job of any CEO is making sure you've got the
22 right people on the bus, that everybody understands
23 their -- their role, and working together, they can
24 achieve the business objectives of the business.

25 Q. Now, usually a bus driver is driving

<p style="text-align: right;">Page 37</p> <p>1 towards a particular -- a particular location, 2 right? A particular direction, right? And that's 3 part of it, too, is setting -- setting the business 4 strategy, the strategic direction of the company. 5 Would you agree with that? 6 A. Well, I mean, certainly the CEO plays a 7 very big role in -- in establishing the direction of 8 the company. But I think, you know, for a company 9 to align on a vision, it has to be a vision that's 10 been -- that a lot of people feel like they have 11 helped to build, and there's -- there's full 12 commitment to it. 13 And, again, I mean, that's sort of the 14 theme of the -- of this bus driver. I think the 15 best CEOs are ones who -- who are not coming down 16 from the mountain with tablets saying, "Here's the 17 answer," but working with the team to jointly get 18 the best ideas and -- and align on -- on a vision 19 for the company in a direction that makes sense. 20 Because it doesn't make -- you know, you 21 rarely get the results you want if -- if one person 22 is saying we've got to do X but everyone else thinks 23 we've got to do Y. I mean, I have never worked with 24 people that just blindly do what I want, as much as 25 I may like that. It is really about coming up with</p>	<p style="text-align: right;">Page 39</p> <p>1 seasoned business people, and, ultimately, the CEO 2 does report to the board. So it's -- it's 3 communicating and adapting as -- as need be as well. 4 Q. And there are also -- the CEO also has -- 5 and, again, I'm not talking -- talking generalities. 6 I'm talking Ken Rees as the CEO. 7 A. Right. 8 Q. That you also have a primary 9 responsibility -- an important responsibility with 10 regard to not only talking to board members but 11 talking to investors, right? 12 MR. SCHEFF: Object to the form. 13 You can answer the question. 14 A. Yeah, I mean, I think it's probably pretty 15 obvious. You've undoubtedly looked at the board 16 memos I write. I think it's important to be highly 17 transparent with the board in all things that are 18 working well, as well as things that aren't working 19 well, and engage them in both understanding, you 20 know -- you know, how the company is working as -- 21 as well as sort of where we're -- where we're headed 22 and what the overall strategy is. 23 BY MR. ACKELSBURG: 24 Q. And with regard to communications with -- 25 with investors as opposed to board members, that</p>
<p style="text-align: right;">Page 38</p> <p>1 a -- a joint vision that people are really 2 passionate about. 3 Q. Well, once the -- once the team has -- once 4 there's consensus on what that -- what that 5 direction is, what the strategy is, then the CEO has 6 certain -- has a certain role in terms of taking 7 that into the world, right? 8 MR. SCHEFF: Object to the form. 9 A. That's right. Yes, the CEO should be 10 working with his team to make sure that -- that 11 we're doing the best job we can moving towards 12 that -- that vision. 13 BY MR. ACKELSBURG: 14 Q. And particularly with regard to relations 15 with the board and communicating that -- that vision 16 to the board and making sure the board is aligned 17 with that vision -- with that vision, that's -- 18 that's certainly a CEO responsibility, would you 19 agree? 20 A. Yes. 21 Q. As well as -- 22 A. Although, I would say, obviously, listening 23 to the board as well. 24 Q. Oh, sure. 25 A. Because the board, you know, are very</p>	<p style="text-align: right;">Page 40</p> <p>1 too, is -- the CEO has a role in that; am I right? 2 MR. SCHEFF: Object to the form. 3 You can answer the question. 4 A. Specifically, I'm -- so, specifically, I 5 guess I want to -- so all of the investors in the 6 company were either on the board, except for the 7 7HBF and Stinson who were not on the board. I did 8 do a fair amount of separate interactions with Mike 9 Stinson as the founder to help him understand and 10 talk to him about the business. I really didn't 11 spend any time updating 7HBF, even though they were 12 a meaningful investor. 13 So I just wanted to highlight, I really 14 spent my time with the board and the -- because the 15 board really represented the investors as well. I 16 didn't -- I wouldn't say I felt that my role was -- 17 was communicating to all of the investors. It was 18 really to the board, and then I also spent some time 19 with Mike just because I thought he was a good 20 sounding board for ideas. 21 BY MR. ACKELSBURG: 22 Q. And I understand that from the -- from the 23 earlier period. But then there came a time as the 24 products became more and more successful that you 25 began looking for -- and maybe -- maybe "investor"</p>

<p style="text-align: right;">Page 41</p> <p>1 is the wrong word.</p> <p>2 I mean, at some point you're looking for</p> <p>3 money, whether it's -- you know, whether it's equity</p> <p>4 money or debt money or -- at some point, you're</p> <p>5 looking for money to support growth in loan volume,</p> <p>6 right?</p> <p>7 MR. SCHEFF: Object to the form.</p> <p>8 You can answer the question.</p> <p>9 A. I guess "investor" in my mind is an equity</p> <p>10 investor.</p> <p>11 BY MR. ACKELSBURG:</p> <p>12 Q. Oh, okay. All right. So what would you --</p> <p>13 what would you call Victory Park, for example?</p> <p>14 A. Lender.</p> <p>15 Q. Okay. So in lender relations, the CEO</p> <p>16 certainly has a role in lender relations, doesn't</p> <p>17 it?</p> <p>18 MR. SCHEFF: Object to the form.</p> <p>19 You can answer.</p> <p>20 BY MR. ACKELSBURG:</p> <p>21 Q. You've had a role in that area?</p> <p>22 A. Yes.</p> <p>23 MR. SCHEFF: Object to the form.</p> <p>24 BY MR. ACKELSBURG:</p> <p>25 Q. Okay. Not only in maintaining relations</p>	<p style="text-align: right;">Page 43</p> <p>1 technology enabled lending businesses and</p> <p>2 opportunities.</p> <p>3 Q. All right. And you've been a speaker at</p> <p>4 LendIt for many years; am I right?</p> <p>5 A. I don't think I was on the first year that</p> <p>6 LendIt -- or maybe in the first couple of years.</p> <p>7 But for a few years now, maybe three years, I have</p> <p>8 been at LendIt.</p> <p>9 Q. Let me give you another exhibit.</p> <p>10 MR. ACKELSBURG: We'll call this 273.</p> <p>11 (Exhibit No. 273 marked.)</p> <p>12 BY MR. ACKELSBURG:</p> <p>13 Q. So this -- I got this off the LendIt</p> <p>14 website. This is the most -- when was the last</p> <p>15 LendIt conference?</p> <p>16 A. It was just a few months ago.</p> <p>17 Q. Right. And you spoke there, right?</p> <p>18 A. Uh-huh (affirmative response).</p> <p>19 Q. What was the topic of your -- of your talk?</p> <p>20 A. I did what they called a fireside chat with</p> <p>21 a reporter Ari Levy from -- I think it was C --</p> <p>22 either CBNC or MSNBC. Must be CNBC -- talking about</p> <p>23 opportunities for nonprime lending and -- and why we</p> <p>24 felt the technology could help eliminate some of the</p> <p>25 predatory products in the space.</p>
<p style="text-align: right;">Page 42</p> <p>1 with existing lenders but also exploring other</p> <p>2 options, perhaps, that might be better economically</p> <p>3 for the company, right?</p> <p>4 MR. SCHEFF: Object to the form.</p> <p>5 You can answer the question.</p> <p>6 A. Chris Lutes, as our CFO, was the person who</p> <p>7 drove both identifying new -- new lenders and the</p> <p>8 relationship management, the existing ones. But I</p> <p>9 certainly played a role as well.</p> <p>10 BY MR. ACKELSBURG:</p> <p>11 Q. Was there also a role in terms of the --</p> <p>12 did you also play a role in terms of the external</p> <p>13 messaging of the company and the company image,</p> <p>14 things like that?</p> <p>15 MR. SCHEFF: Object to the form.</p> <p>16 You can answer.</p> <p>17 A. Certainly, yes.</p> <p>18 BY MR. ACKELSBURG:</p> <p>19 Q. Okay. From time to time, you -- you give</p> <p>20 talks at professional conferences?</p> <p>21 A. I do.</p> <p>22 Q. One of those is call LendIt?</p> <p>23 A. Yes.</p> <p>24 Q. What is LendIt?</p> <p>25 A. LendIt is an industry conference focused on</p>	<p style="text-align: right;">Page 44</p> <p>1 Q. And Exhibit 273 is a copy of the bio you</p> <p>2 supplied for that -- for that conference; am I</p> <p>3 right?</p> <p>4 A. I didn't supply it, but I -- I imagine that</p> <p>5 our PR team did.</p> <p>6 Q. But you looked at it before it was</p> <p>7 submitted, right?</p> <p>8 A. I don't -- I don't know that I did.</p> <p>9 Q. I mean, what I notice is that your years at</p> <p>10 Think Finance seem to have been -- seem to have</p> <p>11 disappeared. Do you see that?</p> <p>12 MR. SCHEFF: Object to the form.</p> <p>13 You can answer the question.</p> <p>14 A. So it talks about Elevate and it talks to</p> <p>15 prior to Elevate, and it doesn't talk about Think</p> <p>16 Finance. But, you know, Elevate is pretty well</p> <p>17 known as the spinoff from Think Finance.</p> <p>18 BY MR. ACKELSBURG:</p> <p>19 Q. So according to this, you -- you know, you</p> <p>20 mention -- well, you mentioned Reed College and</p> <p>21 University of Chicago, right?</p> <p>22 A. For the record, I didn't mention Booz Allen</p> <p>23 or -- or Mr. Payroll, nor did I mention the multiple</p> <p>24 names that happened before. So more focused on -- I</p> <p>25 mean, this is bio, and keeping it short is</p>

<p style="text-align: right;">Page 45</p> <p>1 important. I thought this was the salient parts of</p> <p>2 my -- my resume'.</p> <p>3 Q. So --</p> <p>4 A. Or I mean -- go ahead.</p> <p>5 Q. You came -- you came to Think Finance as</p> <p>6 the CEO in 2004 from CashWorks, right?</p> <p>7 MR. SCHEFF: Objection; misstates the</p> <p>8 testimony.</p> <p>9 A. Actually, I was the president --</p> <p>10 BY MR. ACKELSBURG:</p> <p>11 Q. I'm sorry, the president.</p> <p>12 A. -- of PayDay One, which then turned into</p> <p>13 ThinkCash, which then turned to Think Finance. And</p> <p>14 I'm -- the simplicity of this, rather than listing</p> <p>15 of a bunch of corporate names, that it seemed like</p> <p>16 it was a cleaner thing for people to understand when</p> <p>17 looking at a bio.</p> <p>18 Q. Okay. Is there -- is there any reason why</p> <p>19 you'd rather not talk about Think Finance --</p> <p>20 MR. SCHEFF: Object to the form.</p> <p>21 BY MR. ACKELSBURG:</p> <p>22 Q. -- in a -- in a professional setting like</p> <p>23 this?</p> <p>24 MR. SCHEFF: Object to the form. The</p> <p>25 witness said he's never even seen this document.</p>	<p style="text-align: right;">Page 47</p> <p>1 Everybody have one?</p> <p>2 MR. SHAPIRO: Yes.</p> <p>3 BY MR. ACKELSBURG:</p> <p>4 Q. Do you see the numbers at the lower</p> <p>5 right-hand -- underneath the exhibit sticker, do you</p> <p>6 see the "TF-PA"?</p> <p>7 A. Yes.</p> <p>8 Q. Okay. Just so you understand the</p> <p>9 conventions here, "TF-PA" means it's a document</p> <p>10 produced by Think Finance. You will also see</p> <p>11 probably some documents produced by other parties,</p> <p>12 and when that happens, I'll explain that to you.</p> <p>13 But -- so Exhibit 274 begins -- the other</p> <p>14 thing -- the other convention is that in a</p> <p>15 multi-page document that was produced, we used the</p> <p>16 first page as a convenient way to reference the</p> <p>17 whole document. So if we reference document TF-PA</p> <p>18 683403, we're referring to the discovery document</p> <p>19 that starts with that Bates number. Okay?</p> <p>20 MR. SCHEFF: Irv, is this attached to</p> <p>21 an e-mail?</p> <p>22 MR. ACKELSBURG: No, I don't believe</p> <p>23 it is.</p> <p>24 MR. SCHEFF: Thank you.</p> <p>25 BY MR. ACKELSBURG:</p>
<p style="text-align: right;">Page 46</p> <p>1 So -- didn't draft it. So if that's what you're</p> <p>2 referring to, I think you're misstating the</p> <p>3 testimony and misleading the witness.</p> <p>4 BY MR. ACKELSBURG:</p> <p>5 Q. Go ahead.</p> <p>6 MR. SCHEFF: You can answer the</p> <p>7 question if you can.</p> <p>8 A. But I -- I mean -- so we went public, and</p> <p>9 in the S1 it talks at length about, you know, my</p> <p>10 history with Think Finance and the evolution and how</p> <p>11 Elevate was a spinoff from Think Finance. So,</p> <p>12 certainly, there's been no attempt to, you know,</p> <p>13 sort of expunge that from the record by any stretch</p> <p>14 of the imagination just for purposes of this. It</p> <p>15 was more interesting to highlight the things that</p> <p>16 were highlighted on this page.</p> <p>17 BY MR. ACKELSBURG:</p> <p>18 Q. Okay.</p> <p>19 MR. ACKELSBURG: This is P-274.</p> <p>20 (Exhibit No. 274 marked.)</p> <p>21 BY MR. ACKELSBURG:</p> <p>22 Q. Oh, and we're going to be -- you probably</p> <p>23 know this, but just to be clear, make sure you do</p> <p>24 know it, you see that --</p> <p>25 MR. ACKELSBURG: Are we short any?</p>	<p style="text-align: right;">Page 48</p> <p>1 Q. And just for your -- and, also, just to --</p> <p>2 MR. ACKELSBURG: Thank you, Richard.</p> <p>3 BY MR. ACKELSBURG:</p> <p>4 Q. Just to give the witness as much</p> <p>5 information as possible, you know, I know it's a</p> <p>6 little bit -- we're going to be throwing things at</p> <p>7 you from the past, but -- but according to the</p> <p>8 metadata that came with, this was a document that</p> <p>9 was found in your folder and that you were the</p> <p>10 custodian and that you were the author of the</p> <p>11 document according to the -- to the metadata. Okay?</p> <p>12 A. Thank you.</p> <p>13 Q. All right. So in -- do you need some more</p> <p>14 time to look at it? Are you familiar with the</p> <p>15 document?</p> <p>16 A. I'm not. I can flip through it, if you</p> <p>17 don't mind.</p> <p>18 Q. Sure.</p> <p>19 A. (Reviews document.)</p> <p>20 Can I ask a question? This is highlighted</p> <p>21 here. Was that highlighted --</p> <p>22 Q. I have no idea.</p> <p>23 A. -- in the draft, or was that highlighted by</p> <p>24 the attorneys?</p> <p>25 Q. It's how we -- it's how we got it. No,</p>

<p style="text-align: right;">Page 49</p> <p>1 this is not --</p> <p>2 A. Okay. This is not highlighted by you.</p> <p>3 Q. No. I think this is --</p> <p>4 A. Because I notice that there's a mark on</p> <p>5 here, too. And I -- I assume that's -- that this</p> <p>6 mark is by, I'm sorry, page 12. Is it just my copy</p> <p>7 that has the mark on it?</p> <p>8 MR. SCHEFF: It is.</p> <p>9 BY MR. ACKELSBURG:</p> <p>10 Q. It may be.</p> <p>11 A. Okay.</p> <p>12 Q. Well, we can -- why don't we switch if</p> <p>13 there's a mark on there.</p> <p>14 A. It's not -- it's not interrupting me. It's</p> <p>15 fine.</p> <p>16 Q. Okay.</p> <p>17 A. Thanks.</p> <p>18 MR. SHELTON: Once you're done</p> <p>19 reviewing it, I actually think you should switch</p> <p>20 just because -- for the sake of the record, I want</p> <p>21 the deposition exhibit to be clean rather than</p> <p>22 marked on.</p> <p>23 MR. ACKELSBURG: Yeah, why don't we</p> <p>24 just do that. I'll take it off that. We'll just</p> <p>25 switch the sticker.</p>	<p style="text-align: right;">Page 51</p> <p>1 "Think Finance Business Plan 4-1." Do you see that?</p> <p>2 A. Yes, thank you.</p> <p>3 Q. Okay. So having looked at the document --</p> <p>4 A. I'm sorry, I've got a couple more pages.</p> <p>5 Q. Oh, sure, sure. Go ahead.</p> <p>6 A. Thanks.</p> <p>7 (Reviews document.)</p> <p>8 Thanks for that.</p> <p>9 Q. Okay. So you still don't recognize the</p> <p>10 document itself?</p> <p>11 A. No.</p> <p>12 Q. Okay. But the information that's within</p> <p>13 the document is information that you're familiar</p> <p>14 with; am I right?</p> <p>15 A. Yeah, I mean, it appears to be sort of a</p> <p>16 draft version. There's a lot of gaps in it. I</p> <p>17 don't know what sort of -- the purpose or use of it</p> <p>18 was, but -- but much of the material is material</p> <p>19 that I would have seen from other documents.</p> <p>20 Q. Well, and -- and assuming that you were the</p> <p>21 author -- the metadata says you were, I don't know.</p> <p>22 But if it -- if you were the author, there --</p> <p>23 these -- there's much content in here that you're</p> <p>24 familiar using --</p> <p>25 A. Yes.</p>
<p style="text-align: right;">Page 50</p> <p>1 THE WITNESS: And after we go through</p> <p>2 this, if I could do a restroom break, that would be</p> <p>3 terrific.</p> <p>4 MR. SCHEFF: Do you want to do it now,</p> <p>5 just because --</p> <p>6 THE WITNESS: I can last a little bit</p> <p>7 longer, or we can break now.</p> <p>8 MR. ACKELSBURG: Well, we'll last a</p> <p>9 little bit longer. Just ask a few questions.</p> <p>10 THE WITNESS: Okay. You know,</p> <p>11 actually, now that I think about it, it's going to</p> <p>12 take me a minute to read that. Why don't I go ahead</p> <p>13 and. . .</p> <p>14 THE VIDEOGRAPHER: Going off the</p> <p>15 record. The time is 10:02 a m.</p> <p>16 (Break taken, 10:02 a m. to 10:11 a m.)</p> <p>17 THE VIDEOGRAPHER: We are back on the</p> <p>18 record. The time is 10:11 a m.</p> <p>19 BY MR. ACKELSBURG:</p> <p>20 Q. Mr. Rees, in the -- during the break, we</p> <p>21 did go into the discovery trove and found that, in</p> <p>22 fact, there is an e-mail connected to this document.</p> <p>23 It was an e-mail dated July 5, 2013, from you. It</p> <p>24 looks like, I guess, from one e-mail address to you</p> <p>25 at thinkfinance.com and attaching a document called</p>	<p style="text-align: right;">Page 52</p> <p>1 Q. -- as other things you have written, right?</p> <p>2 A. Correct.</p> <p>3 MR. SCHEFF: Object to the form.</p> <p>4 BY MR. ACKELSBURG:</p> <p>5 Q. Now, do you remember preparing business</p> <p>6 plans either for the board or for investors or for</p> <p>7 the executive team or for -- is this -- this is</p> <p>8 within the bailiwick of what CEOs do, right?</p> <p>9 MR. SCHEFF: Object to the form.</p> <p>10 A. Specifically to this, I don't remember</p> <p>11 this, other than the -- than what we did for the</p> <p>12 regulatory filings when we -- when we went public.</p> <p>13 I don't know that we ever sort of had an official</p> <p>14 business plan that was approved by the board, per</p> <p>15 se. So I can't speak to exactly what the purpose of</p> <p>16 this was.</p> <p>17 BY MR. ACKELSBURG:</p> <p>18 Q. Well, at April 2013, this was -- this was</p> <p>19 before -- this was sometime before the -- the idea</p> <p>20 of the split occurred, right?</p> <p>21 MR. SCHEFF: Object to the form.</p> <p>22 You can answer the question.</p> <p>23 BY MR. ACKELSBURG:</p> <p>24 Q. That was more, like, in the summer after</p> <p>25 the ACH crisis, right?</p>

<p style="text-align: right;">Page 53</p> <p>1 MR. SCHEFF: Object to the form.</p> <p>2 You can answer the question.</p> <p>3 And lack of foundation.</p> <p>4 A. I don't know when we -- we first started</p> <p>5 thinking about a spinoff. It would have been close</p> <p>6 to this time, but I don't know if it happened before</p> <p>7 or after this April time frame or before or after</p> <p>8 the July time that I apparently sent this to myself.</p> <p>9 BY MR. ACKELSBURG:</p> <p>10 Q. But there -- there was -- I mean, there was</p> <p>11 always a desire internally for an IPO, right? I</p> <p>12 mean, that was from the beginning of -- from the</p> <p>13 beginning of your time arriving at the company,</p> <p>14 right, or soon thereafter?</p> <p>15 MR. SCHEFF: Object to the form.</p> <p>16 You can answer the question.</p> <p>17 A. That was one, as they say, liquidity event</p> <p>18 that we were optimistic about from when I joined the</p> <p>19 business, that's correct.</p> <p>20 BY MR. ACKELSBURG:</p> <p>21 Q. And is it possible that you were sketching</p> <p>22 this out for a possible IPO by Think Finance itself?</p> <p>23 MR. SCHEFF: Object to the form; calls</p> <p>24 for speculation.</p> <p>25 You can answer the question.</p>	<p style="text-align: right;">Page 55</p> <p>1 Q. I mean, 11 years of innovation, 3.5 billion</p> <p>2 in credit issue, I mean, these are numbers that</p> <p>3 you're familiar with, right?</p> <p>4 MR. SCHEFF: Object to the form.</p> <p>5 A. There's much that I have seen in here</p> <p>6 before. It's just clearly a draft document, and I</p> <p>7 don't know exactly what the purpose of it was. But</p> <p>8 I -- there was much that would have been consistent</p> <p>9 with other documents we had -- we had written.</p> <p>10 BY MR. ACKELSBURG:</p> <p>11 Q. Well, that you had written, right?</p> <p>12 A. Correct.</p> <p>13 Q. Okay. And the description of the market at</p> <p>14 the bottom of page -- page 1.</p> <p>15 MR. SCHEFF: What about it? Is there</p> <p>16 a question?</p> <p>17 BY MR. ACKELSBURG:</p> <p>18 Q. That's -- that's also consistent with</p> <p>19 other -- other descriptive narratives you've written</p> <p>20 with regard to the -- to the -- to the market you're</p> <p>21 serving?</p> <p>22 MR. SCHEFF: Object to the form.</p> <p>23 You can answer the question.</p> <p>24 A. It's consistent.</p> <p>25 BY MR. ACKELSBURG:</p>
<p style="text-align: right;">Page 54</p> <p>1 He's testified he doesn't remember the</p> <p>2 document.</p> <p>3 A. So I can speak to the fact that at Think</p> <p>4 Finance we did believe that Think Finance could go</p> <p>5 public. I don't know the purpose of this document.</p> <p>6 BY MR. ACKELSBURG:</p> <p>7 Q. Okay. Well, let's just look at some of</p> <p>8 the -- some of the material in here. So let's -- I</p> <p>9 mean, there's things, like, the -- page 4, you see</p> <p>10 there's the four values I think that you talked</p> <p>11 about before. Right? Do you see that?</p> <p>12 A. Yes.</p> <p>13 Q. And there's reference to the town hall</p> <p>14 meetings?</p> <p>15 MR. SCHEFF: Where are you referring</p> <p>16 to? Page same?</p> <p>17 MR. ACKELSBURG: Same page.</p> <p>18 BY MR. ACKELSBURG:</p> <p>19 Q. Right? I mean, these are -- and if you can</p> <p>20 just start from the -- start from the beginning,</p> <p>21 these -- the bullets, the 11 years of innovation --</p> <p>22 MR. SCHEFF: What page are you on?</p> <p>23 MR. ACKELSBURG: Page 1.</p> <p>24 MR. SCHEFF: Thank you.</p> <p>25 BY MR. ACKELSBURG:</p>	<p style="text-align: right;">Page 56</p> <p>1 Q. On page -- let's go back to page 4. And so</p> <p>2 there is -- there's a description of the U.S. credit</p> <p>3 products. Do you see that?</p> <p>4 A. Yes.</p> <p>5 Q. Okay. And the fact that there's question</p> <p>6 marks in the last -- the last box -- do you see</p> <p>7 that? I mean, that -- that indicates this might</p> <p>8 have been a working document, right?</p> <p>9 MR. SCHEFF: Object to the form.</p> <p>10 A. It does appear to be a working document.</p> <p>11 Even the -- it says, "Financing history, company</p> <p>12 values, responsible lending," and not completely</p> <p>13 filled out.</p> <p>14 BY MR. ACKELSBURG:</p> <p>15 Q. Right.</p> <p>16 A. So I -- yes, it does look like a work in</p> <p>17 process.</p> <p>18 Q. And so it -- it goes through the U.S.</p> <p>19 products at the time, and the first one is -- is</p> <p>20 Lending Street. Now, am I right, this was a</p> <p>21 rebranding of PayDay One that was being talked about</p> <p>22 at that time?</p> <p>23 MR. SCHEFF: Object to the form.</p> <p>24 A. That is correct. It's sort of interesting</p> <p>25 that PayDay One wasn't mentioned here, because I</p>

<p style="text-align: right;">Page 57</p> <p>1 don't believe we actually ever launched that brand, 2 Lending Street. I think before we launched it, we 3 ultimately changed the name to RISE, and that's 4 what the -- the PayDay One product ultimately 5 morphed into. 6 BY MR. ACKELSBURG: 7 Q. Okay. And that was the state licensed 8 installment loan product, right? 9 A. Yes. 10 Q. And then there were reference to the three 11 tribal products? 12 A. Correct. 13 Q. Plain Green, Great Plains Lending, 14 Mobiloans, right? 15 A. Yes. 16 Q. And then there's another -- another product 17 called MySalaryLine. Did that ever go online? 18 A. MySalaryLine was the product, as I recall, 19 that we bought originally from another company and 20 then rebranded as Elastic. And it ultimately became 21 that product -- that Republic Bank originated. 22 Q. All right. And then there's -- there's a 23 bar graph on page 5 sort of showing where the 24 company's products lie within the -- within the 25 market, and this is -- you're familiar with this</p>	<p style="text-align: right;">Page 59</p> <p>1 Q. And so let me -- let me just understand the 2 display. So you're basically trying to compare the 3 products that the company is involved in and 4 comparing it to other products in the same space, 5 market space, correct? 6 A. Correct. 7 Q. All right. And so you have PayDay loans, 8 which you have on the right are -- you say are 9 averaging 520 percent, right? 10 A. That's what this says, yes. 11 Q. Okay. And then you have late payments on 12 utility bills as a comparison of more than twice -- 13 twice that, to payday loans, right? 14 A. That's, again, what this says, yes. 15 Q. I mean, why are you comparing payday loans 16 to late payments on utility bills? 17 A. This chart, as I recall, was trying to 18 highlight the real world financial challenges that 19 customers who are not served by banks get into. So 20 if they need to pay an unexpected bill, this has a 21 meaningful expense to them. In this case, there was 22 a -- you know, a late payment. I -- I don't 23 remember the map on this. I'm sure the map was 24 checked. 25 But, you know, with a hundred dollar</p>
<p style="text-align: right;">Page 58</p> <p>1 graph, right? 2 MR. SCHEFF: Object to the form. 3 A. Yes. 4 BY MR. ACKELSBURG: 5 Q. If I were to tell you I've seen this 6 display or something like this display on numerous 7 decks presented to investors or the board or whoever, 8 that you were using -- you, Ken Rees, used -- have 9 used a graph like this frequently, right? 10 MR. SCHEFF: Object to the form. 11 You can answer the question. 12 A. At this era, I -- around 2013 timeframe, I 13 had seen this and used this before it, yes. 14 BY MR. ACKELSBURG: 15 Q. Well, when you say "have seen it," I 16 mean -- 17 A. I said I used it. 18 Q. Did you -- did you create it? 19 MR. SCHEFF: Object to the form. 20 A. We had a PR team, a marketing team. I 21 would have been involved in the creation of it. I 22 don't know that every single one of these line items 23 came from me. I did put it together, but I was 24 involved in the creation of it. 25 BY MR. ACKELSBURG:</p>	<p style="text-align: right;">Page 60</p> <p>1 utility bill, that could generate a very high 2 effective APR so that a payday loan could actually 3 be a financial option for customers versus that. 4 And then, I mean, clearly we felt that products, 5 like -- like, Plain Green and MySalaryLine could be 6 an even better option for consumers. 7 Q. Now, a late payment on an utility bill or 8 an overdraft bill, those are one-time events, right? 9 MR. SHAPIRO: Object to form. 10 A. Like, we were, first and foremost, looking 11 at the difference between APRs. And I think why we 12 thought this was a relevant comparison is if the 13 customer had a payment -- you know, a late payment 14 and they were able to ultimately pay that off very 15 quickly so there weren't any others, they could do 16 the same thing with the loan that they got from us 17 because there was never any prepayment penalties or 18 origination fees or anything like that on our 19 product. So we thought it was a -- it was a fair 20 comparison. 21 But, you know, the point is well taken 22 that -- that there are different terms for these 23 products, but it -- I mean, there's a reason that 24 people look to effective APR as a way to compare the 25 cost of credit.</p>

1 BY MR. ACKELSBURG:

2 Q. Now, payday loans, you mentioned before,
3 they tend to be two-week -- two-week contracts. But
4 they're rarely paid off after two weeks, right?

5 MR. SCHEFF: Object to the form.

6 A. That's -- that's true.

7 BY MR. ACKELSBURG:

8 Q. Okay. Now, in this grid, so you have
9 payday loans as 520 percent. By the way, what
10 was -- what was the -- the rate of PayDay One when
11 that was online?

12 MR. SCHEFF: What -- in what time
13 period?

14 MR. ACKELSBURG: When it was online.
15 I don't know what --

16 MR. SCHEFF: If you know from spanning
17 that time period. . .

18 A. It operated under different state laws, so
19 different states had -- had different -- but I -- my
20 memory is that that was capped at \$14 per hundred
21 for a two-week loan. So it was capped at
22 360 percent.

23 BY MR. ACKELSBURG:

24 Q. Okay. And then you have in the -- in the
25 comparison going down, I mean -- and it's moving to

1 Q. And then you have, "Plain Green (first
2 loan)," and it says 240 percent. Do you see that?

3 A. Yes.

4 Q. And, I mean, if -- and this, in fact,
5 was -- I mean, you would -- Think Finance would have
6 used the numbers that -- the percentages that were
7 actual, the actual -- this was the actual at this
8 time --

9 A. I have no reason to --

10 MR. SCHEFF: Hold on.

11 Finish your question.

12 BY MR. ACKELSBURG:

13 Q. Do you have any reason to believe these
14 numbers are inaccurate?

15 MR. SCHEFF: Object to the form.

16 Answer the question.

17 A. I don't know.

18 BY MR. ACKELSBURG:

19 Q. I notice in this grid that Great Plains
20 Lending is not there. You didn't list them. Do you
21 remember the -- the first loan APR for Great Plains
22 Lending?

23 MR. SCHEFF: Object to the form to the
24 extent that the question suggests that Mr. Rees made
25 a decision to either include or not include Great

1 the left of the graph, you're showing -- you're
2 trying to show less expensive options, right?

3 A. Yes.

4 Q. All right. And then after payday loans,
5 you have Mobiloans line of credit, and you have that
6 as about 390 percent. Do you see that?

7 A. Yes.

8 Q. And how was -- how was -- how did you come
9 up with a 390 percent effective APR for Mobiloans?

10 MR. SCHEFF: Object to the form. He's
11 not saying he did the calculation. If you're
12 referring to "you" as Think Finance, then he can
13 answer that question.

14 BY MR. ACKELSBURG:

15 Q. Go ahead, you can answer it. How did you
16 and the PR people and the people putting together
17 this table come up with that number?

18 MR. SCHEFF: Object to the form;
19 misstates the testimony.

20 You can answer the question.

21 A. If you're asking specifically this table,
22 how did we come up with 390 percent, I believe that
23 was the stated effective APR of the Mobiloans line
24 of credit product at that time.

25 BY MR. ACKELSBURG:

1 Plains Lending.

2 You can answer the question.

3 A. I don't remember what the effective APR of
4 Great Plains Lending was.

5 COURT REPORTER: I'm sorry, you don't
6 remember the effective. . .

7 THE WITNESS: APR of Great Plains
8 Lending.

9 MR. ACKELSBURG: This will be 275.

10 MR. SCHEFF: Are you done with 74?

11 MR. ACKELSBURG: No. We'll go back to
12 that.

13 (Exhibit No. 275 marked.)

14 A. (Reviews document.)

15 BY MR. ACKELSBURG:

16 Q. All right. You see this is now April 2015,
17 this e-mail. We're looking, by the way, at
18 Exhibit 275. It is Bates stamped TF-PA 308918.

19 So the e-mail chain, as many e-mail chains
20 work, you've got to go to the back to see how it
21 works. You know that, right?

22 A. Yes.

23 Q. So April 2015, at this point, you were the
24 CEO of Elevate but still the chairman of the board
25 of Think?

<p style="text-align: right;">Page 65</p> <p>1 A. I'm not sure exactly when I stepped off.</p> <p>2 It would have been --</p> <p>3 Q. About that time?</p> <p>4 A. You guys would know. But probably about</p> <p>5 that time I left the board, but I don't know exactly</p> <p>6 when that was.</p> <p>7 Q. Okay. So you -- you noticed an article</p> <p>8 about -- when it says "CT," it's the Chippewa?</p> <p>9 Or -- is that who you're referring to? I don't know</p> <p>10 what CT is. No, it wouldn't be --</p> <p>11 A. CT.</p> <p>12 Q. CT, I'm sorry, the Connecticut lawsuit with</p> <p>13 the Otoe-Missouria, right?</p> <p>14 A. That's what it appears to be.</p> <p>15 Q. Okay. So there's an article that you're</p> <p>16 noticing that describes the State of Connecticut's</p> <p>17 lawsuit with the Otoe-Missouria tribe, and you're</p> <p>18 quoting to Michelle Nguyen the -- the description of</p> <p>19 the APR's on Great Plains' loans. Do you see that?</p> <p>20 A. Yes.</p> <p>21 Q. Okay. And what the article said was that</p> <p>22 the -- the APR is in the range of 349 percent to,</p> <p>23 roughly, 449 percent. Do you see that?</p> <p>24 A. Yes.</p> <p>25 Q. Okay. And it looks like you were surprised</p>	<p style="text-align: right;">Page 67</p> <p>1 A. I think I'm making a distinction between</p> <p>2 the products where Think Finance is the lender and</p> <p>3 where Think Finance provides technology and services</p> <p>4 to the lender.</p> <p>5 Q. The latter being the indirect that would --</p> <p>6 A. I don't --</p> <p>7 MR. SCHEFF: Object to the form.</p> <p>8 A. Actually, thank you, I didn't see the word</p> <p>9 "indirect" until I just looked here. So, yes,</p> <p>10 right, that appears to be correct.</p> <p>11 BY MR. ACKELSBURG:</p> <p>12 Q. Okay. And what this description -- so let</p> <p>13 me just ask you: Is it correct that with regard to</p> <p>14 products where Think Finance was the direct lender,</p> <p>15 the income it receives is the finance charges that</p> <p>16 consumers pay, right?</p> <p>17 A. Yes.</p> <p>18 Q. And in -- with regard to the direct loan</p> <p>19 programs, Think Finance also directly bears the cost</p> <p>20 of losses, marketing expenses and operating</p> <p>21 expenses, correct?</p> <p>22 A. For the direct?</p> <p>23 Q. Yes.</p> <p>24 A. Yes.</p> <p>25 Q. Okay. And then we -- we get into the</p>
<p style="text-align: right;">Page 66</p> <p>1 to see that the APRs were that high, and you asked</p> <p>2 Michelle whether that was accurate. And she</p> <p>3 confirmed that, in fact, those were the accurate</p> <p>4 numbers, right?</p> <p>5 MR. SCHEFF: Object to the form.</p> <p>6 You can answer the question.</p> <p>7 A. Correct.</p> <p>8 BY MR. ACKELSBURG:</p> <p>9 Q. Okay. So assuming this is correct, then</p> <p>10 where would -- where would GPL -- going back to the</p> <p>11 exhibit we were looking at before, where would GPL</p> <p>12 fit?</p> <p>13 A. Well, if this is correct, from 350 to 448,</p> <p>14 it would have been below Quid on the low side and</p> <p>15 between late fee on credit card balances and payday</p> <p>16 loans on the high side.</p> <p>17 Q. Okay. Now, there's a -- if you turn the</p> <p>18 page, now we're on page 6, there's a section of this</p> <p>19 document that's entitled, "How Think Finance Makes</p> <p>20 Money." Do you see that?</p> <p>21 A. Yes, I do.</p> <p>22 Q. And in the first paragraph -- and I think</p> <p>23 the -- there's a -- there's a distinction being made</p> <p>24 between direct and indirect product. That's a</p> <p>25 distinction you're familiar with, right?</p>	<p style="text-align: right;">Page 68</p> <p>1 indirect products. That's the next -- it looks like</p> <p>2 the next paragraph. It says in those cases, and</p> <p>3 using Great Plains, Plain Green and Mobiloans as</p> <p>4 examples, "Think Finance receives license fees for</p> <p>5 the technology and underwriting scores." Is that</p> <p>6 correct?</p> <p>7 MR. SCHEFF: Object to the form.</p> <p>8 You can answer the question.</p> <p>9 BY MR. ACKELSBURG:</p> <p>10 Q. Is the information correct?</p> <p>11 A. Just for the record, it also included the</p> <p>12 MySalaryLine product. But, yes, the -- the Think</p> <p>13 Finance receives licensing fees for technology and</p> <p>14 underwriting scores and marketing revenue from the</p> <p>15 lender for helping them acquire customers.</p> <p>16 Q. Okay. And then -- and then it states in</p> <p>17 the next paragraph that nonaffiliated investment</p> <p>18 funds purchase participations in those indirect --</p> <p>19 in those indirect loans, correct?</p> <p>20 A. That's correct.</p> <p>21 Q. And it says and that way the lenders</p> <p>22 only -- you know, only need limited capital to --</p> <p>23 I'm not -- I'm not giving you every word for word.</p> <p>24 I'm trying to -- basically summarizing this, that</p> <p>25 the lenders only need limited capital to make the</p>

<p style="text-align: right;">Page 69</p> <p>1 loans, and they can also keep the credit risk off</p> <p>2 their books, right?</p> <p>3 MR. SCHEFF: Object to the form.</p> <p>4 A. So I think a more broad-based assessment of</p> <p>5 why lenders would participate out the loans in this</p> <p>6 way, it's a pretty common practice for banks. I</p> <p>7 think almost all mortgages are ultimately -- you</p> <p>8 know, a participation is sold off on the mortgages,</p> <p>9 generally, for a couple reasons. One is the cash --</p> <p>10 the actual capital that the lender has, but also in</p> <p>11 the case of banks, then the -- regulations require</p> <p>12 them to -- to overcapitalize loan balances. And so</p> <p>13 that's why a lot of banks push those balances to</p> <p>14 third parties.</p> <p>15 So it's a -- a cash constraint as well as</p> <p>16 the -- in the banking environment, they're</p> <p>17 oftentimes forced by regulators to -- to get more</p> <p>18 equity capital investments to support the growth of</p> <p>19 a loan portfolio.</p> <p>20 BY MR. ACKELSBURG:</p> <p>21 Q. But if we move to the tribal environment,</p> <p>22 there is no such -- there really are no similar</p> <p>23 regulations; am I right?</p> <p>24 MR. SCHEFF: Object to the form.</p> <p>25 You can answer the question.</p>	<p style="text-align: right;">Page 71</p> <p>1 Q. Well, you already answered that you're not</p> <p>2 aware of that law. But are you aware of any -- are</p> <p>3 you aware of any tribal law in the lending arena at</p> <p>4 all?</p> <p>5 A. Yes.</p> <p>6 MR. SCHEFF: Like what? Just general</p> <p>7 tribal lending law? Is that what you're asking for?</p> <p>8 A. Yes, there's tribal lending laws.</p> <p>9 BY MR. ACKELSBURG:</p> <p>10 Q. And what are you referring to? The model</p> <p>11 code of the -- of NAFSA, is that what you're</p> <p>12 referring to?</p> <p>13 A. The tribes set up -- they have their -- I</p> <p>14 can't speak to all the details, but I believe they</p> <p>15 have -- it's been represented to me they have their</p> <p>16 own lending statutes.</p> <p>17 Q. Who represented that to you?</p> <p>18 MR. SCHEFF: Object to the form.</p> <p>19 To the extent you can answer that question</p> <p>20 without revealing communications from counsel,</p> <p>21 please do. If you can't, then just advise us, and</p> <p>22 we'll direct you not to answer the question.</p> <p>23 A. I don't think I can.</p> <p>24 MR. SCHEFF: Okay. Then I direct you</p> <p>25 not to answer the question.</p>
<p style="text-align: right;">Page 70</p> <p>1 A. In the tribal environment, it was about the</p> <p>2 cash and capital availability of that tribe to make</p> <p>3 those loans and keep them on their books.</p> <p>4 BY MR. ACKELSBURG:</p> <p>5 Q. But there's no regulator who's telling them</p> <p>6 how much capital they have to have or how much</p> <p>7 reserves or anything -- anything equivalent to what</p> <p>8 banks have, right?</p> <p>9 MR. SHELTON: Object to form.</p> <p>10 MR. SCHEFF: Object to the form.</p> <p>11 You can answer the question if you can.</p> <p>12 A. I don't know the tribal law in all of the</p> <p>13 cases. I'm not aware of any tribal law that forces</p> <p>14 them to overcapitalize for -- for loan balances.</p> <p>15 BY MR. ACKELSBURG:</p> <p>16 Q. Are you aware of any tribal law that deals</p> <p>17 with any -- anything equivalent to something like --</p> <p>18 well, the National Bank Act or something like that?</p> <p>19 MR. SCHEFF: Object to the form.</p> <p>20 Answer the question if you can.</p> <p>21 A. You -- I think what it sounds like we're</p> <p>22 specifically asking is am I aware of a tribal law</p> <p>23 that requires a tribe to overcapitalize their loan</p> <p>24 balances?</p> <p>25 BY MR. ACKELSBURG:</p>	<p style="text-align: right;">Page 72</p> <p>1 BY MR. ACKELSBURG:</p> <p>2 Q. So other than anything you heard from</p> <p>3 your -- from an attorney, have you ever seen</p> <p>4 anything purporting to be tribal law?</p> <p>5 A. Have I ever seen tribal law?</p> <p>6 Q. Pertaining to the -- to consumer lending?</p> <p>7 A. I'm sure the only tribal consumer lending</p> <p>8 statutes or representation about that would have</p> <p>9 come from counsel.</p> <p>10 Q. Okay. Well, we'll drop that for the</p> <p>11 moment.</p> <p>12 Let's go back to -- let's go back to the</p> <p>13 text here on page 6. So the -- in the direct -- in</p> <p>14 the direct lending context, Think Finance would</p> <p>15 directly bear the cost of loss, marketing expense</p> <p>16 and operating expense, right? That's -- in the</p> <p>17 direct lending context, that's how it works</p> <p>18 financially, right?</p> <p>19 A. That's correct.</p> <p>20 Q. Isn't that how it worked in the indirect as</p> <p>21 well?</p> <p>22 MR. SCHEFF: Object to the form.</p> <p>23 You can answer the question if you can.</p> <p>24 A. So there's a difference in it. This</p> <p>25 actually states it, I think, pretty clearly.</p>

<p style="text-align: right;">Page 73</p> <p>1 There's a difference between the contractual</p> <p>2 relationships and the accounting treatment. So the</p> <p>3 contractual relationships -- should I finish?</p> <p>4 BY MR. ACKELSBURG:</p> <p>5 Q. Yeah. I'm just confused. Yeah,</p> <p>6 absolutely.</p> <p>7 MR. SCHEFF: Just finish your question</p> <p>8 (sic), and then he'll ask another.</p> <p>9 BY MR. ACKELSBURG:</p> <p>10 Q. Yeah, yeah, absolutely, finish.</p> <p>11 A. So in the contractual relationships, as</p> <p>12 it -- as it says here, we receive licensing fees for</p> <p>13 the technology and underwriting scores. And then</p> <p>14 "we," meaning Think Finance, receive marketing</p> <p>15 revenue from the lender to help them acquire</p> <p>16 customers.</p> <p>17 However, as is laid out here, and I'm</p> <p>18 really just reading from it, "The investment funds,"</p> <p>19 these unaffiliated investment funds that buy</p> <p>20 participations, "contracted with Think Finance as</p> <p>21 the administrative agent for the funds and to</p> <p>22 purchase past due loans from the books of the</p> <p>23 investment funds. Because of this, for accounting</p> <p>24 purposes, Think Finance typically consolidates loans</p> <p>25 onto its balance sheets and recognizes finance</p>	<p style="text-align: right;">Page 75</p> <p>1 and then the administrative agent.</p> <p>2 But -- so that's why, generally speaking,</p> <p>3 the finance charge and -- and losses and operating</p> <p>4 expenses -- see if I can say it. I think what --</p> <p>5 what I've said is -- is sort of accurate, that</p> <p>6 there's a contractual relationship, and that's how</p> <p>7 we generally make money. But the accounting</p> <p>8 treatment, because of the -- the guarantee to the --</p> <p>9 to the investment funds we're required to recognize</p> <p>10 that finance revenue on our balance sheet --</p> <p>11 BY MR. ACKELSBURG:</p> <p>12 Q. All right. Well, let's -- let's --</p> <p>13 A. -- on a P&L.</p> <p>14 Q. I'm sorry, I didn't mean to interrupt.</p> <p>15 A. Yeah, and, I'm sorry, I'm -- that I'm not</p> <p>16 an accountant. I sort of -- you may be getting to</p> <p>17 the -- to the limit of my understanding of the exact</p> <p>18 accounting treatment and which FASB rules require us</p> <p>19 to recognize that revenue and those losses directly.</p> <p>20 Q. Well, I'm not asking -- I mean, I realize</p> <p>21 you're not a CPA. I'm not asking you for -- you</p> <p>22 know, for CPA talk. This is really more CEO talk</p> <p>23 what -- I mean, the CEO certainly knows the audited</p> <p>24 financial statements of his company, right?</p> <p>25 MR. SCHEFF: Object to the form. He's</p>
<p style="text-align: right;">Page 74</p> <p>1 charges, losses, and operating expenses." This is</p> <p>2 an accounting treatment, not a contractual one.</p> <p>3 Q. All right. So first of all, in terms of</p> <p>4 the paragraph you just read, is that information</p> <p>5 accurate? Does it accurately describe the tribal</p> <p>6 products at Think?</p> <p>7 MR. SCHEFF: As of 2013?</p> <p>8 MR. ACKELSBURG: Yeah.</p> <p>9 MR. SCHEFF: Thank you.</p> <p>10 A. At the time, I believe it did represent</p> <p>11 accurately the business relationship between Think</p> <p>12 and the tribes.</p> <p>13 BY MR. ACKELSBURG:</p> <p>14 Q. Okay. And am I right, that for accounting</p> <p>15 purposes, the -- the loans are effectively on the</p> <p>16 balance sheet of Think Finance?</p> <p>17 MR. SCHEFF: Object to the form.</p> <p>18 You can answer the question.</p> <p>19 A. The difference between the contractual</p> <p>20 relationship and accounting relationship is -- is</p> <p>21 distinct. And as I've said, the contractual</p> <p>22 relationship, the only way that we got cash flows</p> <p>23 was from the -- the licensing agreement and from the</p> <p>24 technology and services -- excuse me -- the</p> <p>25 marketing arrangement, the technology and services,</p>	<p style="text-align: right;">Page 76</p> <p>1 told you what the limits of his knowledge are.</p> <p>2 And you can answer the question if you</p> <p>3 can.</p> <p>4 BY MR. ACKELSBURG:</p> <p>5 Q. You're familiar with the -- with the</p> <p>6 financial statements of your company, right?</p> <p>7 MR. SCHEFF: You're asking whether</p> <p>8 he's familiar with the financial statements of Think</p> <p>9 Finance as of 2013?</p> <p>10 BY MR. ACKELSBURG:</p> <p>11 Q. Go ahead, you can answer the question now.</p> <p>12 MR. SCHEFF: Which question do you</p> <p>13 want him to ask?</p> <p>14 BY MR. ACKELSBURG:</p> <p>15 Q. Just answer the question.</p> <p>16 MR. SCHEFF: Because he's got to</p> <p>17 confine to Think Finance to this time period, 2013.</p> <p>18 So confine your answer appropriately.</p> <p>19 BY MR. ACKELSBURG:</p> <p>20 Q. You're familiar with the Think Finance</p> <p>21 consolidated financial statements, correct?</p> <p>22 A. In 2013, I would have reviewed the</p> <p>23 consolidated statements of the company.</p> <p>24 Q. And you would have reviewed them in 2012?</p> <p>25 A. I would have reviewed them annually, yes.</p>

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<p>1 Q. Every year?</p> <p>2 A. Uh-huh (affirmative response).</p> <p>3 Q. Yes? You've got to say "yes."</p> <p>4 A. Yes. Sorry.</p> <p>5 Q. Well, I want to just probe this difference</p> <p>6 between contractual and accounting. And so let's</p> <p>7 just talk contractual. With regard to the tribal</p> <p>8 loans, the tribes had no monetary risk; am I right?</p> <p>9 MR. SCHEFF: Object to the form.</p> <p>10 BY MR. ACKELSBURG:</p> <p>11 Q. No risk of loss --</p> <p>12 MR. SCHEFF: Object to the form.</p> <p>13 BY MR. ACKELSBURG:</p> <p>14 Q. -- on nonpayment of loans?</p> <p>15 MR. SCHEFF: Object to the form.</p> <p>16 A. Well, they retained 1 percent of the --</p> <p>17 this is at -- at the time that that evolved, as I'm</p> <p>18 sure you know. But at the time of the -- we're</p> <p>19 talking about here, the tribes made the full loan,</p> <p>20 and then at the -- the participant would have the</p> <p>21 option to purchase that -- that loan from them, and</p> <p>22 they could purchase up to 99 percent of that loan</p> <p>23 and leave the -- the tribe with 1 percent.</p> <p>24 So there's sort of two -- two inherent</p> <p>25 risks that the tribe had. One was that the lender</p>	<p>1 MR. SCHEFF: Object to the form;</p> <p>2 misstates prior testimony, misstates documents you</p> <p>3 have marked as exhibits. Don't mislead the witness.</p> <p>4 Ask an appropriate question.</p> <p>5 BY MR. ACKELSBURG:</p> <p>6 Q. Now you can answer.</p> <p>7 A. I'm sorry, what is the question?</p> <p>8 Q. I know, it's hard when your lawyers are</p> <p>9 giving you -- telling you what they want you to talk</p> <p>10 about.</p> <p>11 MR. SCHEFF: No, we're trying to make</p> <p>12 sure that you don't mislead the witness that you</p> <p>13 keep doing in every single deposition.</p> <p>14 MR. ACKELSBURG: Oh, I'm -- I'm</p> <p>15 sure that what's --</p> <p>16 MR. SCHEFF: Ask your question. Just</p> <p>17 ask the question, a proper question.</p> <p>18 BY MR. ACKELSBURG:</p> <p>19 Q. When the -- when the relationship with</p> <p>20 Plain Green began -- you certainly remember that in</p> <p>21 2011, right? You remember that -- let's just take</p> <p>22 question by question.</p> <p>23 You remember the beginnings of that</p> <p>24 relationship?</p> <p>25 A. I remember the beginnings of that</p>
Page 78	Page 80
<p>1 would decide not to purchase those balances from</p> <p>2 the -- from the -- from the tribe, in which case</p> <p>3 they would have a hundred percent of the risk.</p> <p>4 Otherwise, they would only have 1 percent of the --</p> <p>5 of the risk. If the -- excuse me -- if the -- that</p> <p>6 investor in the fund purchased the 99 percent, then</p> <p>7 they would be left with the 1 percent left over.</p> <p>8 BY MR. ACKELSBURG:</p> <p>9 Q. But the tribes -- that initial funding</p> <p>10 capital, the tribes didn't use their own money for</p> <p>11 that, right?</p> <p>12 MR. SCHEFF: Object to the form; lack</p> <p>13 of foundation.</p> <p>14 You can answer the question if you can.</p> <p>15 A. I don't think that's accurate.</p> <p>16 BY MR. ACKELSBURG:</p> <p>17 Q. All right. Well, let's just start -- let's</p> <p>18 go through the tribes. Plain Green, that capital</p> <p>19 came from Steven Haynes to make the loans, right?</p> <p>20 A. I don't know the details of that</p> <p>21 transaction, but that's -- that's been what I've</p> <p>22 been told.</p> <p>23 Q. And then Think Finance gave Mr. Haynes --</p> <p>24 or Haynes Investments the money to give to Plain</p> <p>25 Green. You remember that, right?</p>	<p>1 relationship.</p> <p>2 Q. Okay. And do you remember that Think</p> <p>3 Finance made it clear to the Chippewa Cree that they</p> <p>4 were not going to have to put up any of their own</p> <p>5 money? You remember, right?</p> <p>6 A. I don't remember that.</p> <p>7 MR. SCHEFF: Object to the form.</p> <p>8 BY MR. ACKELSBURG:</p> <p>9 Q. You don't remember that?</p> <p>10 A. No, I don't.</p> <p>11 MR. SCHEFF: Object to the form.</p> <p>12 BY MR. ACKELSBURG:</p> <p>13 Q. Do you remember the term "turnkey"?</p> <p>14 A. Turnkey?</p> <p>15 Q. We have a turnkey solution that -- just</p> <p>16 give us the word, and we'll plug it in, something</p> <p>17 like that?</p> <p>18 MR. SCHEFF: Object to the form;</p> <p>19 misstates the exhibits. You know that,</p> <p>20 Mr. Ackelsberg. Ask a proper question.</p> <p>21 A. So the term "turnkey," which I do remember</p> <p>22 seeing from a -- from a presentation, doesn't, in my</p> <p>23 mind, and in -- of course, in fact didn't mean that</p> <p>24 there was no capital requirement for -- for the</p> <p>25 tribes.</p>

<p style="text-align: right;">Page 81</p> <p>1 BY MR. ACKELSBURG:</p> <p>2 Q. The tribes never had to put up any of their</p> <p>3 money in 2011 or 2012 or 2013 to initiate any new</p> <p>4 loans by Plain Green; am I right?</p> <p>5 MR. SCHEFF: Object to the form.</p> <p>6 You can answer the question if you can.</p> <p>7 A. You said just Plain Green we're talking</p> <p>8 about?</p> <p>9 BY MR. ACKELSBURG:</p> <p>10 Q. That's all I'm talking about right now.</p> <p>11 A. I don't know the answer to that.</p> <p>12 Q. Might it be correct that the tribes got</p> <p>13 their -- that Plain Green got their money from</p> <p>14 Mr. Haynes, who got the money from Think Finance?</p> <p>15 MR. SCHEFF: Objection; asked and</p> <p>16 answered, calls for speculation.</p> <p>17 Answer the question if you.</p> <p>18 MR. ACKELSBURG: Speculation?</p> <p>19 MR. SCHEFF: Yeah. You started the</p> <p>20 question with "might it be possible." I mean, come</p> <p>21 on, Irv, ask a proper question, will you? I mean,</p> <p>22 this is kind of ridiculous. It's a waste of time.</p> <p>23 Just ask a proper question.</p> <p>24 MR. ACKELSBURG: Are you done?</p> <p>25 MR. SCHEFF: I am. I am.</p>	<p style="text-align: right;">Page 83</p> <p>1 MR. SHAPIRO: Object to form.</p> <p>2 MR. SCHEFF: Object to the form.</p> <p>3 BY MR. ACKELSBURG:</p> <p>4 Q. That was the arrangement for the other two</p> <p>5 tribes?</p> <p>6 MR. SHAPIRO: Same objection.</p> <p>7 MR. SCHEFF: Misstates the prior</p> <p>8 testimony. Object to the form.</p> <p>9 You can answer the question if you can.</p> <p>10 A. Was that a question?</p> <p>11 MR. SCHEFF: Hard to say.</p> <p>12 BY MR. ACKELSBURG:</p> <p>13 Q. How did -- how did Great Plains Lending get</p> <p>14 its initial lending capital?</p> <p>15 A. I don't know. I assume that they were</p> <p>16 using their -- their capital for the program.</p> <p>17 Q. Did Great Plains Lending have any capital</p> <p>18 to put into the program?</p> <p>19 MR. SCHEFF: Object to the form.</p> <p>20 You can answer the question if you can.</p> <p>21 A. Well, they had another loan program already</p> <p>22 in existence by the time that Great Plains came into</p> <p>23 being. So I think they did have capital as a -- as</p> <p>24 a tribal organization.</p> <p>25 BY MR. ACKELSBURG:</p>
<p style="text-align: right;">Page 82</p> <p>1 MR. ACKELSBURG: I'm enjoying it</p> <p>2 immensely.</p> <p>3 MR. SCHEFF: Good. Ask a proper</p> <p>4 question.</p> <p>5 BY MR. ACKELSBURG:</p> <p>6 Q. So Plain Green, can you sit here today and</p> <p>7 tell us, yes, you are sure that Plain Green was</p> <p>8 putting up its own money to make loans in 2011?</p> <p>9 MR. SCHEFF: Objection; misstates the</p> <p>10 testimony.</p> <p>11 Answer the question if you can.</p> <p>12 BY MR. ACKELSBURG:</p> <p>13 Q. Can you say?</p> <p>14 A. No, I can't say that. What I am aware of</p> <p>15 was, was there was a loan to Haynes, and there was a</p> <p>16 loan from Haynes to the tribe. I don't know</p> <p>17 anything more about what additional capital was put</p> <p>18 up or not put up by Plain Green. I don't believe</p> <p>19 there was a similar financial transaction for either</p> <p>20 of the other two tribes that Think Finance worked</p> <p>21 with during that period.</p> <p>22 Q. Well, that's because Great Plains -- that's</p> <p>23 because Victory Park provided for a reserve account</p> <p>24 so that they could, basically, front the money to</p> <p>25 Great Plains Lending and Mobiloans, right?</p>	<p style="text-align: right;">Page 84</p> <p>1 Q. Sitting here today, are you not aware of a</p> <p>2 GPLS reserve account that provided that upfront</p> <p>3 funding?</p> <p>4 A. I don't --</p> <p>5 MR. SCHEFF: Object to the form.</p> <p>6 A. As I said, I don't know the specifics of</p> <p>7 exactly all of the accounting treatments and how</p> <p>8 money was moved back and forth. That would have</p> <p>9 been what -- what the CFO did primarily working with</p> <p>10 VPC and the tribes, obviously.</p> <p>11 BY MR. ACKELSBURG:</p> <p>12 Q. But I'm not talking about accounting. I'm</p> <p>13 talking about actual money, whether -- whether the</p> <p>14 Otoe-Missouria had to put out any of their money to</p> <p>15 fund the loans?</p> <p>16 MR. SCHEFF: Objection; asked and</p> <p>17 answered.</p> <p>18 MR. SHAPIRO: Can you read the</p> <p>19 witness's last answer -- the answer to the last</p> <p>20 question, please?</p> <p>21 COURT REPORTER: "As I said, I don't</p> <p>22 know the specifics of exactly all of the accounting</p> <p>23 treatments and how money was moved back and forth.</p> <p>24 That would have been what -- what the CFO did</p> <p>25 primarily working with CFPB (sic) and the tribes,</p>

1 obviously."

2 MR. SCHEFF: VPC.

3 COURT REPORTER: Oh, VPC, okay.

4 BY MR. ACKELSBURG:

5 Q. And then I asked you, I'm not talking about
6 accounting, I'm talking about whether the -- in
7 fact, the Otoe-Missouria put out any of their own
8 funds to originate loans.

9 MR. SHAPIRO: But, in fairness, the
10 witness's last answer was accounting and the
11 specifics of how money was moved back and forth. It
12 wasn't just accounting. So he's answered your
13 question, I believe. I just don't want to get lost
14 in the --

15 MR. ACKELSBURG: Okay. I understand
16 what you're -- okay. I understand. Thank you.

17 BY MR. ACKELSBURG:

18 Q. So just -- and I'm not talking about
19 accounting. I'm not. I'm talking about just where
20 the dollars come from. When Great Plains Lending
21 loans were funded, do you know, for a fact, that
22 tribal money was -- was the source of that funding?

23 MR. SCHEFF: Object to the form; asked
24 and answered.

25 You can answer again, Mr. Rees.

1 lending operations, were they?

2 A. Tunica-Biloxi was one tribe that we worked
3 with that did not have a preexisting lending program
4 in place.

5 Q. All right. So a tribe that has never lent
6 money before, you're -- do you know whether they --
7 they had the capital to actually fund loans?

8 MR. SCHEFF: Objection; asked and
9 answered.

10 BY MR. ACKELSBURG:

11 Q. Mobiloans?

12 MR. SCHEFF: Answer again.

13 A. I assume that they did. They had a -- you
14 know, we were aware of the casino business that they
15 had. We believed they had other economic
16 development on the reservation as well. So I
17 believe they did have the capital to fund those
18 loans.

19 BY MR. ACKELSBURG:

20 Q. I know you believe it. Did anyone -- did
21 you -- did anyone ever tell you that they had the
22 money to fund the loans?

23 MR. SCHEFF: Object to the form; asked
24 and answered.

25 You can answer it again.

1 You're referring to Great Plains?

2 MR. ACKELSBURG: Yes.

3 MR. SHAPIRO: Object to the form as
4 well. There was a foundation issue. There are
5 foundation issues there.

6 A. For Great Plains, I was under the
7 assumption that Great Plains was putting at least
8 some of their own capital, you know, for the
9 program. I can't speak to exactly how much, what
10 the structures were, but that was my understanding.

11 BY MR. ACKELSBURG:

12 Q. And what about Mobiloans, did they have any
13 capital to -- did the Tunica-Biloxi have any capital
14 to fund -- to fund these initial cash advances?

15 A. Tunica-Biloxi was also, from our
16 perspective, a relatively sophisticated tribe in
17 terms of how they had a number of businesses that
18 they operated. So I would have assumed in the same
19 way that they had put at least some of their own
20 money into the loan programs.

21 Q. You're talking about the casinos that they
22 had?

23 A. I know they had a casino, but I was told
24 that other -- they had other businesses as well.

25 Q. Well, none of those businesses were -- were

1 A. I don't remember if anyone specifically
2 told me one way or the other. Like I said, I did
3 assume that they were providing at least some of the
4 capital. I would still assume that.

5 BY MR. ACKELSBURG:

6 Q. And --

7 A. I mean, actually, I --

8 MR. SCHEFF: You've answered the
9 question.

10 THE WITNESS: Okay. Thank you.

11 BY MR. ACKELSBURG:

12 Q. And once -- once the partici- -- at least
13 once the 99 participation kicks in and 99 percent
14 purchase has occurred, the most that the tribe would
15 be risking would be 1 percent of the -- of the
16 balance of the loan; am I right?

17 MR. SHAPIRO: Object to form.

18 MR. SHELDON: Object to form.

19 MR. SCHEFF: Object to the form;
20 misstates the prior answer.

21 You can answer again.

22 A. If the -- investment group bought the
23 99 percent participation, they would be left with
24 1 percent, and that would be what their risk of loss
25 would be.

<p style="text-align: right;">Page 89</p> <p>1 BY MR. ACKELSBURG:</p> <p>2 Q. All right. Now, as to the other</p> <p>3 99 percent, that risk of loss was, basically, that</p> <p>4 the -- that the lender there -- and I'm talking</p> <p>5 about VPC. Right? If we're talking about the</p> <p>6 99 percent.</p> <p>7 MR. SHAPIRO: Object to form.</p> <p>8 BY MR. ACKELSBURG:</p> <p>9 Q. Right? We're talking about GPLS or --</p> <p>10 A. GPLS was the entity that purchased that,</p> <p>11 correct.</p> <p>12 Q. Okay. Now, GPLS had no risk; am I right?</p> <p>13 MR. SCHEFF: Object to the form.</p> <p>14 A. That's -- that's not true.</p> <p>15 BY MR. ACKELSBURG:</p> <p>16 Q. Well -- all right. What was the nature of</p> <p>17 GPLS's risk?</p> <p>18 A. If the portfolio for some reason was</p> <p>19 uncollectible and Think was unable to provide the</p> <p>20 services under the administer -- administer</p> <p>21 agreement to them, they would have had that loss.</p> <p>22 MR. SHAPIRO: Late objection on form</p> <p>23 on that question.</p> <p>24 BY MR. ACKELSBURG:</p> <p>25 Q. Now, the obligations that Think had towards</p>	<p style="text-align: right;">Page 91</p> <p>1 Q. And as admin- -- as GPLS -- as the</p> <p>2 administrative agent for GPLS, Think Finance</p> <p>3 guaranteed that return to GPLS. That's part of the</p> <p>4 guarantee, correct?</p> <p>5 MR. SCHEFF: Object to the form.</p> <p>6 A. My understanding of the guarantee agreement</p> <p>7 was exactly that, that it would guarantee the return</p> <p>8 if Think had sufficient resources to do that. Now,</p> <p>9 of course, the risk was that they wouldn't have the</p> <p>10 resources, so it's a large and growing portfolio.</p> <p>11 BY MR. ACKELSBURG:</p> <p>12 Q. I understand. And Think also absorbed the</p> <p>13 risk of the loans going bad, right?</p> <p>14 MR. SCHEFF: Object to the form.</p> <p>15 A. As part of the -- the administrative agent</p> <p>16 agreement, if the loans went past due, my</p> <p>17 understanding, is that -- that Think would purchase</p> <p>18 those off of the balance sheet of the -- of that</p> <p>19 fund to -- as part of sort of how -- that was the</p> <p>20 guarantee agreement, that -- that they would</p> <p>21 purchase the past due loans.</p> <p>22 BY MR. ACKELSBURG:</p> <p>23 Q. So the risk of the loans going bad was one</p> <p>24 of the risks that Think Finance assumed as part of</p> <p>25 its contractual deal with Victory Park and Great --</p>
<p style="text-align: right;">Page 90</p> <p>1 GPLS were set forth in an administrative agency</p> <p>2 agreement and a guarantee and security agreement,</p> <p>3 correct?</p> <p>4 A. I believe that's correct.</p> <p>5 Q. And you signed them as the CEO, right?</p> <p>6 A. I don't know for a fact. It wouldn't be</p> <p>7 surprising.</p> <p>8 Q. And under those agreements, Think -- now,</p> <p>9 the GPLS -- I'm sorry, strike that.</p> <p>10 GPLS initially got a 20 percent return,</p> <p>11 right?</p> <p>12 MR. SCHEFF: Object to the form.</p> <p>13 Define "initially."</p> <p>14 BY MR. ACKELSBURG:</p> <p>15 Q. Let's -- beginning of the tribal period is</p> <p>16 20 percent guaranteed return?</p> <p>17 MR. SCHEFF: Object to the form.</p> <p>18 You can answer the question.</p> <p>19 A. I don't remember the exact numbers.</p> <p>20 BY MR. ACKELSBURG:</p> <p>21 Q. Whatever --</p> <p>22 A. If you -- you know, I could probably</p> <p>23 stipulate that there was a range, but I don't</p> <p>24 remember exact whether it was 20 percent or what the</p> <p>25 exact terms were.</p>	<p style="text-align: right;">Page 92</p> <p>1 and GPLS, right?</p> <p>2 MR. SHELDON: Object to form. It's</p> <p>3 not clear to me anymore. These questions started</p> <p>4 with the discussion of the 99 percent interest, and</p> <p>5 now they've morphed into loans overall. So I'm not</p> <p>6 sure if either the record or the witness is clear on</p> <p>7 where these questions have led.</p> <p>8 BY MR. ACKELSBURG:</p> <p>9 Q. You can answer. So --</p> <p>10 A. I've forgotten what the question was.</p> <p>11 Q. See, now you understand what -- the</p> <p>12 process. I ask a question, they get you confused</p> <p>13 about what the question is, and now I have to try</p> <p>14 again. Now we're --</p> <p>15 MR. SCHEFF: Just ask a proper</p> <p>16 question and stop the chatter.</p> <p>17 MR. ACKELSBURG: I should stop the</p> <p>18 chatter?</p> <p>19 MR. SCHEFF: Yeah.</p> <p>20 BY MR. ACKELSBURG:</p> <p>21 Q. So the -- Think Finance guaranteed the</p> <p>22 return to the -- to the investment fund, correct?</p> <p>23 A. So my understanding of the --</p> <p>24 Q. Administrative.</p> <p>25 A. -- of the administrative agreement is that</p>

<p style="text-align: right;">Page 93</p> <p>1 as per that, if loans in that portfolio, that</p> <p>2 99 percent that was purchased, went past due, that</p> <p>3 to the extent Think had the capital to do that, they</p> <p>4 would buy the -- the past due loans off of that --</p> <p>5 off the books, and that if there was -- if the --</p> <p>6 that fund was not achieving the target rate of</p> <p>7 return, which I don't remember what that was, that</p> <p>8 Think would be responsible for adding into that fund</p> <p>9 to ensure that the investors got their target rate</p> <p>10 of return. That's my understanding.</p> <p>11 Q. And that was the -- that's what the</p> <p>12 contracts defined between Think Finance and GPLS,</p> <p>13 right?</p> <p>14 MR. SHAPIRO: Object to form.</p> <p>15 A. As I said, that's my understanding.</p> <p>16 BY MR. ACKELSBURG:</p> <p>17 Q. Okay. Now, let's move to the accounting</p> <p>18 side. And when we -- when we -- have you ever heard</p> <p>19 in the accounting -- in the -- as a CEO, have you</p> <p>20 ever heard the term of "substance over form"?</p> <p>21 A. I've heard that expression.</p> <p>22 Q. Okay. And you're also familiar with</p> <p>23 generally accepted -- the term "GAAP," G-A-A-P?</p> <p>24 A. I'm familiar with the term.</p> <p>25 Q. I mean, as a CEO, that's -- that's a term</p>	<p style="text-align: right;">Page 95</p> <p>1 accounting principles require us to consolidate</p> <p>2 those balances onto our balances, correct.</p> <p>3 BY MR. ACKELSBURG:</p> <p>4 Q. So just to go back to my question -- and</p> <p>5 we'll stay just within the world of the accountants</p> <p>6 and generally accepted accounting principles -- with</p> <p>7 regard -- so am I right, then -- and I'm just</p> <p>8 looking back at the description of page 6 of this</p> <p>9 business plan that we're looking at, P-274, when it</p> <p>10 said Think Finance, in a direct loan, bears the cost</p> <p>11 of losses, marketing expenses and operating</p> <p>12 expenses, right?</p> <p>13 A. Yes.</p> <p>14 Q. Now, with regard to the cost of losses, at</p> <p>15 least from the account -- in the accountant's view,</p> <p>16 the indirect -- on the indirect side, Think Finance</p> <p>17 is also bearing the cost of loss?</p> <p>18 MR. SCHEFF: Object to the form.</p> <p>19 You can answer the question.</p> <p>20 BY MR. ACKELSBURG:</p> <p>21 Q. That's the accountant's view of the world?</p> <p>22 MR. SCHEFF: Object to the form.</p> <p>23 Answer the question if you can.</p> <p>24 A. I think we've been pretty clear,</p> <p>25 accounting -- accounting rules require us to</p>
<p style="text-align: right;">Page 94</p> <p>1 you have to be familiar with, right?</p> <p>2 A. Yes.</p> <p>3 MR. SCHEFF: Object to the form.</p> <p>4 BY MR. ACKELSBURG:</p> <p>5 Q. And one of the purposes of GAAP, or</p> <p>6 generally accepted accounting principles, is that</p> <p>7 the -- that the financial statements capture the</p> <p>8 financial reality of the transactions or entities</p> <p>9 that the accountants are looking at?</p> <p>10 MR. SCHEFF: Objection to the form.</p> <p>11 Answer the question if you can.</p> <p>12 A. I think that's a misstatement of what GAAP</p> <p>13 is trying to do. There are -- I mean, I -- not</p> <p>14 being an accountant, I don't know that I can get</p> <p>15 into the specifics, but I think you're</p> <p>16 oversimplifying what GAAP is trying to do.</p> <p>17 BY MR. ACKELSBURG:</p> <p>18 Q. Okay. But you are aware that with regard</p> <p>19 to your auditors, the 99 percent interest in the</p> <p>20 loans originated by each one of the three tribes</p> <p>21 have appeared on the consolidated financial</p> <p>22 statements as assets of Think Finance?</p> <p>23 MR. SCHEFF: Object to the form.</p> <p>24 Answer the question if you can.</p> <p>25 A. And as -- as we've been discussing,</p>	<p style="text-align: right;">Page 96</p> <p>1 consolidate those loans onto a balance sheet and</p> <p>2 recognize finance charges also as operating</p> <p>3 expenses. That is different from the contractual</p> <p>4 relationships in terms of how we serve the tribal</p> <p>5 lenders and the administrative agreement with the --</p> <p>6 with the third-party.</p> <p>7 BY MR. ACKELSBURG:</p> <p>8 Q. Well, we haven't talked about marketing</p> <p>9 expenses and operating expenses, but why -- why</p> <p>10 don't we mention that. That clearly when Think</p> <p>11 Finance is the direct lender, those operating</p> <p>12 expenses or marketing expenses are -- come off</p> <p>13 the -- come off the revenue of -- of Think Finance,</p> <p>14 right?</p> <p>15 MR. SCHEFF: Object to the form.</p> <p>16 You can answer the question.</p> <p>17 A. I'm sorry, I was just distracted by the</p> <p>18 noise. Can you say that again?</p> <p>19 BY MR. ACKELSBURG:</p> <p>20 Q. So with regard to marketing expenses and</p> <p>21 operating expenses of a loan product that Think</p> <p>22 Finance is making directly as the lender, whatever</p> <p>23 operating expenses and marketing expenses are</p> <p>24 attributable to that product, they came -- that's --</p> <p>25 that's Think Finance's problem, right, that comes</p>

<p style="text-align: right;">Page 97</p> <p>1 off of Think Finance's revenue?</p> <p>2 MR. SCHEFF: Object to the form.</p> <p>3 A. That's correct.</p> <p>4 MR. SCHEFF: You can answer the</p> <p>5 question.</p> <p>6 A. That's correct.</p> <p>7 BY MR. ACKELSBURG:</p> <p>8 Q. Okay. And on the tribal side, at least</p> <p>9 from the accountant's standpoint, isn't it also true</p> <p>10 that the marketing expenses and the operating</p> <p>11 expenses were essentially coming off of Think</p> <p>12 Finance's --</p> <p>13 A. The marketing expense --</p> <p>14 MR. SCHEFF: Just wait until he</p> <p>15 finishes the question.</p> <p>16 BY MR. ACKELSBURG:</p> <p>17 Q. Go ahead.</p> <p>18 MR. SCHEFF: You haven't finished the</p> <p>19 question. Ask the question, and he'll give you an</p> <p>20 answer.</p> <p>21 BY MR. ACKELSBURG:</p> <p>22 Q. Isn't it the same, at least as far as the</p> <p>23 accountants are concerned, on the indirect -- on the</p> <p>24 indirect loan side?</p> <p>25 MR. SCHEFF: Object to the form.</p>	<p style="text-align: right;">Page 99</p> <p>1 BY MR. ACKELSBURG:</p> <p>2 Q. Moderately.</p> <p>3 A. If it didn't, it's probably because I</p> <p>4 don't -- I'm not an accountant. I'm trying to give</p> <p>5 you the best sense of my understanding of the</p> <p>6 situation. And I'm sure that Chris Lutes probably</p> <p>7 did a better job explaining this than I have.</p> <p>8 Q. Turn the page to page 7. We're still in</p> <p>9 the same document. And there's a reference to the</p> <p>10 competitive -- this is, basically, describing,</p> <p>11 like -- it seems to me, like, what's special about</p> <p>12 Think Finance in terms of its -- its expertise,</p> <p>13 its -- its value proposition. Am I right?</p> <p>14 MR. SCHEFF: Object to the form.</p> <p>15 A. I agree with that statement.</p> <p>16 BY MR. ACKELSBURG:</p> <p>17 Q. Okay. And the way that this document</p> <p>18 describes the sort of value proposition of Think</p> <p>19 Finance is that it has three core platforms,</p> <p>20 which -- which account for its competitive</p> <p>21 advantage, its competitive value proposition, right?</p> <p>22 MR. SCHEFF: Object to the form.</p> <p>23 A. This is -- this page is identifying the</p> <p>24 areas of the business that we've invested in to</p> <p>25 serve our customers and -- and ultimately grow in</p>
<p style="text-align: right;">Page 98</p> <p>1 You can answer the question if you can.</p> <p>2 A. So on marketing expenses, because they're</p> <p>3 related to the marketing agreement, yes, we would</p> <p>4 have recognized the marketing expenses because</p> <p>5 they're directly in correlation with the -- with the</p> <p>6 marketing agreement that we had.</p> <p>7 There were operating expenses that we had</p> <p>8 that we would have recognized, but, for instance,</p> <p>9 the operating expenses, more broadly speaking,</p> <p>10 related to the delivery of the product. The -- for</p> <p>11 instance, the operating expenses, that if it had</p> <p>12 been a direct product that we originated, like, for</p> <p>13 call center support or collection support, for a</p> <p>14 direct product, we would have recognized that.</p> <p>15 For the indirect product, we don't have a</p> <p>16 requirement to pay those expenses. But my</p> <p>17 understanding -- and, again, not being an</p> <p>18 accountant, my understanding is that the accounting</p> <p>19 treatment would have forced us to recognize those</p> <p>20 call center costs, like -- I'm not entirely certain</p> <p>21 about that, but there are differences between the</p> <p>22 expenses that we're required to assume as per</p> <p>23 accounting treatment as per, you know, how we would</p> <p>24 normally think about things as a direct lender.</p> <p>25 Did my answer make any sense?</p>	<p style="text-align: right;">Page 100</p> <p>1 the market. These three areas, the marketing</p> <p>2 capabilities, the risk and analytics capabilities,</p> <p>3 and the platform delivery capabilities would be the</p> <p>4 three that I would generally say are the top three</p> <p>5 for us as a company.</p> <p>6 BY MR. ACKELSBURG:</p> <p>7 Q. All right. Good.</p> <p>8 So could -- I just want to go through</p> <p>9 these quickly just so that I understand the</p> <p>10 difference between these platforms. And just so</p> <p>11 we're clear, whether we're talking about a direct</p> <p>12 lending product or an indirect lending product,</p> <p>13 these three platforms are -- are involved in both</p> <p>14 those types -- both those models of product; am I</p> <p>15 right?</p> <p>16 MR. SCHEFF: Object to the form.</p> <p>17 You can answer the question.</p> <p>18 A. Yes, for -- for the direct product, we</p> <p>19 utilize all three of these platforms to deliver the</p> <p>20 product. With an indirect product, we license the</p> <p>21 risk and analytics platform and the product platform</p> <p>22 and utilize marketing to service as the marketing</p> <p>23 arm and under the marketing agreement.</p> <p>24 BY MR. ACKELSBURG:</p> <p>25 Q. Okay. So just starting with the product</p>

1 platform, and the -- and I'm starting that way
2 because in the way that the -- it looks like it's a
3 pyramid, and it starts from the bottom and works its
4 way up, or at least the first of the platforms
5 that's described in this document is the product
6 platform.

7 And in the narrative, it -- it describes
8 various modules that are part of the platform. Is
9 that -- and is this information accurate, that these
10 are the modules that compose the platform?

11 A. At this point in time, this was how we
12 tended to think about the -- the delivery platform.

13 Q. And so the decision engine, this is the
14 actual mechanics of, like, of how the -- you know,
15 of how a loan -- a decision whether to approve or
16 reject or conditionally approve with verification,
17 that's what we're talking about with the decision
18 engine, those kind of mechanics, right?

19 MR. SCHEFF: Object to the form.

20 You can answer the question.

21 A. Yes.

22 BY MR. ACKELSBURG:

23 Q. And the prefunding module, what's that
24 about?

25 MR. SCHEFF: Object to the form.

1 You can answer the question.

2 A. I believe this was when the -- the decision
3 engine would make the automated decisions, yes, no.
4 And if no, provide notice by the section; if, yes,
5 they provide the offer to the customer. But there
6 was also fraud that happened between that and when
7 the loan was ultimately sort of -- excuse me --
8 fraud identification and remediation, that it
9 happened after the loan was approved and before it
10 was ultimately funded.

11 BY MR. ACKELSBURG:

12 Q. And --

13 A. So that's what that's referring to.

14 Q. Okay. And then there's a payment module
15 that is connected to the ACH processing?

16 A. Yes.

17 Q. Okay. And that has to do with the
18 interface between the Think Finance and the --
19 whoever is providing the ACH services?

20 A. Yes.

21 Q. And it says loan management
22 accruals/statements is another module that's --
23 that's keeping track of payments by the customer?

24 MR. SCHEFF: Object to the form.

25 You can answer the question.

1 A. That's the accounting part of the -- of the
2 platform that managed the daily accruals and
3 tracking of all the finance charges and things like
4 that, yes.

5 BY MR. ACKELSBURG:

6 Q. And then there's another module which deals
7 with communications with the customers by e-mail or
8 text?

9 A. Yes.

10 Q. And another module that deals with support
11 for the collections process?

12 MR. SCHEFF: Object to the form.

13 A. I believe this is referring to CRM, so
14 customer relationship management. So it's both the
15 customer support for any inbound calls or the
16 management of ongoing collections activities.

17 MR. SCHEFF: Irv, when you get to a
18 good break time, it's bio time.

19 MR. ACKELSBURG: Okay.

20 MR. SCHEFF: And it's been a little
21 more than an hour, as well.

22 MR. ACKELSBURG: I mean, we can -- we
23 can break now and maybe do one more run until lunch,
24 that's fine. I mean, we can -- that's fine.

25 THE VIDEOGRAPHER: We are off the

1 record. The time is 11:16 a.m.

2 (Break taken, 11:16 a.m. to 11:26 a.m.)

3 THE VIDEOGRAPHER: We are back on the
4 record. The time is 11:26 a.m.

5 BY MR. ACKELSBURG:

6 Q. All right. Mr. Rees, I want to move to the
7 risk and analytics platform on page 8 of the
8 document. And this is going to need a little bit
9 more of your help in understanding this. Now, first
10 of all, there's reference to -- so the horizontal
11 cells in the little grid under "Customer Lifecycle,"
12 do you see that?

13 A. Yes.

14 Q. And there's -- there's four columns:
15 Acquire, Approve, Optimize, and Collect. So it
16 sounds like -- well, first of all, we're talking
17 about the way the data is used. And, again, this is
18 a value proposition, the expertise of the company,
19 the way that the risk and analytics platform uses
20 big data to -- at various points of the relationship
21 with a customer. Is that what we're talking about?

22 A. Yes.

23 Q. Okay. Now, on -- in the initial column,
24 where it says "Acquire," are we talking about
25 things, like, direct mail, like, how to -- how to

1 target direct mail campaigns? Would that be under
2 the "Acquire"?

3 A. I'll answer the question, but just
4 vis-a-vis this specific chart, this isn't -- my
5 recollection is this isn't entirely accurate. I
6 think this was in -- obviously, in this draft there
7 was some semimisrepresentations, in particular, just
8 pointing to -- I -- I don't believe we used either
9 subprime bureau data or social media and alternate
10 data in the "Collect" part of this. But -- so just
11 perspective on this chart as a whole, I don't think
12 it's completely fleshed out. To your point, though,
13 yes, at the time -- at the time. . .

14 Q. 2013.

15 A. I believe in 2013, we were using prime
16 bureau data for direct mail campaigns. I think that
17 was your question.

18 Q. And subprime bureau data?

19 A. I don't think we were using that for direct
20 mail campaigns.

21 Q. Okay. So why don't -- can you explain the
22 difference between a prime bureau and a subprime
23 bureau?

24 A. Yeah, so there's -- the way we categorize
25 them, the three -- big three bureaus: Experian,

1 A. I don't -- I don't know -- I knew it was
2 related to a --

3 Q. Or Selling Source?

4 A. I remember it was related to Selling
5 Source. I didn't know what relationship Tucker had
6 to either of those businesses.

7 Q. Okay. And then the one that was puzzling
8 to me was social media and how social media and --
9 and I've actually read some articles where you even
10 described this. So if you could just briefly
11 explain how -- what was unique about Think Finance's
12 use of social media?

13 MR. SCHEFF: Object to the form. I
14 think the witness testified that they weren't using
15 social media in '13.

16 MR. ACKELSBURG: No, no, you misheard.
17 That was with regard to collections.

18 MR. SCHEFF: I may have.

19 MR. ACKELSBURG: Yeah.

20 BY MR. ACKELSBURG:

21 Q. So now we'll answer the question.

22 A. You're correct, this is -- as I said, on --
23 I don't -- I can't -- I don't know what was the
24 intent of this. It's not quite accurate. The -- in
25 2013, we had been doing some limited sort of

1 Equifax and Trans Union, are primarily serving prime
2 customers, and they're the traditional sources of,
3 like, you know -- that's what goes into a FICO score
4 and things like that.

5 The subprime bureaus, in our minds,
6 were -- and I think all these were in existence back
7 then: Clarity, MicroBilt, Teletrack. There's
8 FactorTrust. There might have been a couple others.
9 Ones that had very limited data on just sort of
10 targeted niches in the -- in the credit provision.

11 So Teletrack, as an example, got most of
12 its data from brick-and-mortar payday lenders. They
13 didn't have anything that -- that banks originate.
14 Clarity had some bank transactions but were
15 primarily online lending based.

16 Q. And what about MicroBilt?

17 A. I don't know what was unique about
18 MicroBilt. I just remember they were also, in our
19 minds, subprime, sort of more nichey provider of
20 credit information.

21 Q. And there was another one called DataX. Do
22 you remember that one?

23 A. DataX, yes. I had forgotten about them.
24 Thank you.

25 Q. That was Mr. Tucker's company, right?

1 testing, I would say, of the social media in the
2 approved section. In particular, what we were
3 looking for was whether the customer had a social
4 media footprint, did they have a LinkedIn account, a
5 Facebook account. If they didn't have any social
6 media footprint, that raised a flag, and that was a
7 potential fraud indicator. But that's the only
8 place that I was aware that back then we used social
9 media information anywhere in the customer
10 lifecycle.

11 Q. All right. So, basically, just generally
12 what we're talking about is purchasing data from --
13 from a variety of third-party sources to make
14 decisions, either with regard to who the company is
15 going to approach as a potential customer, or as
16 you -- as you move across this grid, how the
17 decision engine is going to actually work and making
18 the decision whether to lend or not. Am I right?

19 MR. SCHEFF: Object to the form.
20 You can answer the question.

21 A. Yeah, just specifically, so, of course, as
22 you probably know, my recollection is the data that
23 was bought was bought by the lender, typically. So
24 in some cases, the data was actually purchased by
25 whether -- if it's a bank, the bank would have been

<p style="text-align: right;">Page 109</p> <p>1 buying the data directly. The tribal lender would 2 typically buy that data directly. That would go 3 into our platform, and our platform's algorithms, 4 based on the model analysis that was done by the 5 analytics team, would then, you know, sort that into 6 either scores or decision trees and come up with a 7 decision of yes or no. Hopefully, I answered that 8 question. 9 BY MR. ACKELSBURG: 10 Q. Yeah. Now, when you say the tribe would 11 buy the data, you're talking about there would, in 12 fact, be a contract between, let's say, MicroBilt or 13 Clarity and Plain Green, for example, right? 14 A. Correct. 15 Q. Okay. But when MicroBilt or Clarity would 16 deliver the actual data used by the platform, it 17 wouldn't go first to somebody at Box Elder and who 18 then has to get it to Think Finance, would it? 19 A. In -- really, we were serving as an agent 20 of the -- whether it's a tribe or a bank and -- and 21 the platform, based on the contract with the data 22 provider, would stipulate that the data provider 23 would send that information into our platform to be 24 decisioned. 25 Q. Right. So when someone, for example, went</p>	<p style="text-align: right;">Page 111</p> <p>1 A. Yes. 2 Q. Okay. All right. So in addition to that 3 data that's third-party data that would be 4 transmitted to the Think Finance platform, was -- 5 over the course of the customer life cycle, did the 6 risk and analytics platform also have access to the 7 historic -- to the historic either application data 8 or performance data that was in-house, that's just 9 from all the years of making loans online at Think 10 Finance? 11 MR. SCHEFF: Object to the form. 12 A. I believe for fraud purposes -- I can't 13 speak to outside of that. I do believe that if 14 there was a determined fraud, that that would be a 15 database that was available to all of the lending 16 initiatives, both direct and indirect. I don't know 17 if -- if they use any -- any other internal data 18 more broadly than that. 19 BY MR. ACKELSBURG: 20 Q. But in terms of the actual approval, let's 21 say as far as the decision engine goes, did it -- 22 did the platform utilize internal historic data as 23 well as the third-party data? 24 A. As I said -- 25 MR. SCHEFF: Object to the form.</p>
<p style="text-align: right;">Page 110</p> <p>1 on the Plain Green website to apply for a loan, the 2 data traveled from these third-party providers to 3 Think Finance pursuant to the contract that they had 4 signed with the tribe, right? That's the way it 5 worked? 6 A. It went direct to the -- to the IQ 7 technology platform that was decisioned on behalf of 8 the tribe or the bank, what have you, yes. 9 Q. Yeah. Okay. Now, in addition to this 10 third-party data that Think would purchase pursuant 11 to contracts with whoever was the named lender, did 12 Think Finance -- 13 A. I'm sorry, you -- can you state that again 14 because I'm not sure I -- I heard right. 15 Q. Okay. So -- 16 A. I thought you said we purchased it 17 pursuant -- 18 MR. SCHEFF: He did. Misstated the 19 testimony. 20 BY MR. ACKELSBURG: 21 Q. Well, that Think Finance acquired it 22 pursuant to the contracts. 23 A. Transmitted to Think's platform pursuant to 24 the contract? 25 Q. Yes. Is that better?</p>	<p style="text-align: right;">Page 112</p> <p>1 A. As I said, the only thing that I'm aware of 2 was for fraud purposes. 3 BY MR. ACKELSBURG: 4 Q. Fraud purposes. Okay. 5 A. So it was for shared fraud data across 6 the -- across the lending programs, which is not 7 unusual in this space. 8 Q. All right. Let's turn the page, page 9. 9 There's a description of the -- there's a section 10 called "Regulatory Environment." Do you see it? 11 A. Yes. 12 Q. Okay. And there -- I've seen reference on 13 a number of documents to something called 14 "regulatory diversification." That's a term that 15 you're familiar with; am I right? 16 A. We've used that term, yes. 17 Q. Okay. And so when you used that term 18 internally, what -- what did you mean by that? 19 A. Well, I mean, the business from, you know, 20 even before I joined the company was interested in 21 diversification both in terms of products and the 22 regulatory model. So to be able to serve the 23 optimal number of customers, there was direct 24 consumer products as well as -- as you -- you can 25 classify them, as written here, indirect products as</p>

<p style="text-align: right;">Page 113</p> <p>1 well.</p> <p>2 Q. So the -- the direct products are generally</p> <p>3 offered in states that have some form of authorizing</p> <p>4 legislation that allows for those kind of products,</p> <p>5 correct?</p> <p>6 MR. SCHEFF: Object to the form.</p> <p>7 You can answer the question.</p> <p>8 A. All of the direct products are originated</p> <p>9 under state law. I was just verifying. Yes, so</p> <p>10 they're all originated under state law.</p> <p>11 BY MR. ACKELSBURG:</p> <p>12 Q. So there would be either an authorizing</p> <p>13 statute or a licensing statute, something that</p> <p>14 basically says this kind of product is okay in our</p> <p>15 state, right?</p> <p>16 A. Supported the -- the rate structure we felt</p> <p>17 was needed to serve the customer, yes.</p> <p>18 Q. Okay. And then the way the -- the</p> <p>19 regulatory diversification works is that through the</p> <p>20 so-called indirect products, Think was also able to</p> <p>21 operate within states that didn't have such</p> <p>22 authorizing or licensing statutes?</p> <p>23 MR. SCHEFF: Object to the form.</p> <p>24 MR. SHELTON: Object to form.</p> <p>25 A. So I -- the answer is -- I mean, I guess I</p>	<p style="text-align: right;">Page 115</p> <p>1 the years, first as a -- as a direct lender and</p> <p>2 then -- then as a service provider.</p> <p>3 BY MR. ACKELSBURG:</p> <p>4 Q. And would I -- would I be correct in</p> <p>5 stating that regulatory diversification was also</p> <p>6 something that set the company apart from some of</p> <p>7 its peer competitors?</p> <p>8 MR. SCHEFF: Object to the form.</p> <p>9 A. Not every lender used a diverse set of</p> <p>10 products, but it was pretty common, still is.</p> <p>11 BY MR. ACKELSBURG:</p> <p>12 Q. Well, let's take, for example, Cash</p> <p>13 America, you know -- that's a competitor you're</p> <p>14 familiar with, right?</p> <p>15 A. Yes.</p> <p>16 Q. They're based here in Fort Worth, right?</p> <p>17 A. Yeah.</p> <p>18 Q. Okay. And they're an online lender?</p> <p>19 A. They -- well, Cash America had an online</p> <p>20 lending business.</p> <p>21 Q. Okay. And when Cash America had an online</p> <p>22 lending business, it was strictly a state</p> <p>23 licensed -- they -- they worked strictly within the</p> <p>24 state license model; am I right?</p> <p>25 A. I don't think that's true. I remember that</p>
<p style="text-align: right;">Page 114</p> <p>1 have to -- I'll just walk through sort of my</p> <p>2 understanding of the -- of the regulatory situation.</p> <p>3 The banks operated under the National Bank</p> <p>4 Act, and as with credit cards, they're able to</p> <p>5 originate credit across the U.S. and are not subject</p> <p>6 to -- to state law. As will be discussed, that that</p> <p>7 also is the situation, at least my understanding,</p> <p>8 with Native American tribes. So the -- you know,</p> <p>9 ultimately, our technology was able to serve more</p> <p>10 underserved customers across the U.S. by having</p> <p>11 banks and tribal lenders use our technology platform</p> <p>12 than we would have been able to directly serve as a</p> <p>13 state licensed lender.</p> <p>14 BY MR. ACKELSBURG:</p> <p>15 Q. Now, the -- we talked about the plat- --</p> <p>16 the three platforms as -- I realize we only talked</p> <p>17 about two of them, but -- we didn't talk about</p> <p>18 marketing, but I think we can leave that for the</p> <p>19 moment. That these three platforms are part of what</p> <p>20 define the value proposition of the company of Think</p> <p>21 Finance within the space of online lending, correct?</p> <p>22 MR. SCHEFF: Object to the form.</p> <p>23 You can answer the question.</p> <p>24 A. We -- we certainly viewed our technology</p> <p>25 platform as a strength in something we built over</p>	<p style="text-align: right;">Page 116</p> <p>1 Cash America had bank partnerships to operate in</p> <p>2 certain states.</p> <p>3 Q. Right. But when the bank -- but when the</p> <p>4 bank partnerships dried up as a result of the bank</p> <p>5 regulator's involvement and companies, like</p> <p>6 yourself, were moving into tribal model, Cash</p> <p>7 America didn't move in that direction; am I right?</p> <p>8 MR. SCHEFF: Object to the form.</p> <p>9 A. As I said, they -- they had a regulatory</p> <p>10 diversification, which is what you asked, bank and</p> <p>11 nonbank, but they opted not to do any tribal</p> <p>12 partnerships, that's correct.</p> <p>13 BY MR. ACKELSBURG:</p> <p>14 Q. And Think Finance, in fact, at some point,</p> <p>15 was purchasing leads from Cash America from those</p> <p>16 states where Cash America chose not to lend in; am I</p> <p>17 right?</p> <p>18 A. I'm not aware of that.</p> <p>19 Q. Okay.</p> <p>20 A. I'm not suggesting it didn't happen. I'm</p> <p>21 just not aware of that relationship.</p> <p>22 Q. Okay. On page 12 of the document, do you</p> <p>23 see the second section, "Regulatory Risk"?</p> <p>24 A. Yes.</p> <p>25 Q. And I'm particularly interested in the</p>

<p style="text-align: right;">Page 117</p> <p>1 second paragraph there. And I'll read it to you. 2 "There is unique regulatory risk related to our 3 technology and marketing support for tribal lenders. 4 Because this lending model is relatively new and 5 because many state" -- I assume that's "states" -- 6 "don't believe tribes should be allowed to operate 7 in violation of their state laws, we can expect 8 challenges to this model." Do you see that? 9 A. Yes. 10 Q. Okay. And that's -- that's an accurate 11 statement of the company's thinking back then in 12 2013? 13 MR. SCHEFF: Object to the form. 14 A. It is. 15 BY MR. ACKELSBURG: 16 Q. "Yes"? 17 A. Yes. 18 Q. Okay. And that -- that the uniqueness of 19 this risk was different than in the bank context, in 20 the bank years, right? 21 MR. SCHEFF: Object to the form. 22 A. I actually wouldn't say that. I think 23 the -- what was unique about it was that it's 24 relatively new, but I think both bank and tribal 25 were subject to challenges from states that either</p>	<p style="text-align: right;">Page 119</p> <p>1 A. I was speaking specifically to -- to banks. 2 BY MR. ACKELSBURG: 3 Q. Oh, okay. 4 A. And, like I said, the National Bank Act is 5 pretty clear, that banks do have this right, yet, 6 you know, we saw certain states challenging the 7 rights of national banks to originate credit as 8 per -- you know, it's not -- I think it's a hundred 9 years since the National Bank Act was put into 10 account. 11 So I -- you know, I -- you know, perhaps 12 it was an unfair statement on my part to assume what 13 the -- what the rationale was, but it didn't seem to 14 be, at least from our perspective, and from -- you 15 know, from our perspective based on a true belief 16 that the National Bank Act just didn't apply. 17 Q. Well, I'm -- 18 A. And I would -- I'm sorry, go ahead. 19 Q. Well, let's just -- let's focus on the 20 tribal model. 21 A. Okay. 22 Q. And so I think we -- there's no -- there's 23 no statute out there like that the National Bank Act 24 that authorizes tribes to do online lending, right? 25 MR. SCHEFF: Object to the form.</p>
<p style="text-align: right;">Page 118</p> <p>1 thought they had a legal justification or, in some 2 cases, wanted to get publicity for their perspective 3 on higher interest lending. 4 BY MR. ACKELSBURG: 5 Q. So is that what you think that states 6 were -- were motivating states to challenge the 7 model, that they were looking for publicity? 8 A. I think I was -- 9 MR. SCHEFF: Object to the form. 10 A. -- I was clear that I think in some cases 11 there was a legitimate view that this was a state's 12 rights, but I think, in particular with regard to 13 say, National Bank Act, which is so firmly 14 entrenched in law, the challenges to banks 15 originating credit across the U.S. seemed less based 16 on legal precedent than they do in media. 17 BY MR. ACKELSBURG: 18 Q. That -- I'm trying to understand what 19 you're saying. You're saying that when states have 20 challenged the tribe -- the tribal model lending, 21 they've done so not out of what the law is, but 22 rather -- but rather the desire for some sort of 23 publicity? 24 A. I was -- 25 MR. SCHEFF: Object to the form.</p>	<p style="text-align: right;">Page 120</p> <p>1 BY MR. ACKELSBURG: 2 Q. We all know that, right? 3 A. In this case -- in this case, I was pretty 4 clear in -- in this write-up that there are states 5 who don't believe that tribes should be allowed to 6 operate, and they don't. At least from my 7 understanding back then, weren't aware of the 8 sovereign rights of tribes. And it wouldn't be 9 surprising to us, and sort of why it was in here, 10 because the, you know, sovereign rights of tribes 11 are not something that attorneys general and other 12 people in states deal with on a day-to-day basis, 13 may not have the experience. And there had really 14 been relatively recent case law about it come from 15 the California and Colorado states, that it wouldn't 16 have been surprising if -- if all states weren't 17 fully conversant in. 18 Q. And I'm hearing that there was, on your 19 part, some frustration with state policymakers not 20 appreciating the importance of the service that 21 you're providing. Am I right? 22 A. I don't know that this is suggesting -- 23 Q. I'm not -- 24 A. -- frustration so much as -- as the 25 recognition of the reality that there might be</p>

<p style="text-align: right;">Page 121</p> <p>1 challenges to the model because of the newness and</p> <p>2 the fact that, you know, tribal sovereign rights is</p> <p>3 not an area of law that's particularly well-known</p> <p>4 broadly, especially in states that don't have Native</p> <p>5 American tribes.</p> <p>6 Q. We cited a -- forgetting offhand the --</p> <p>7 whether it was an article or a company -- a company</p> <p>8 blog, but something coming from you in the years</p> <p>9 prior to the -- to the litigation where you</p> <p>10 reference state laws being Byzantine. Do you</p> <p>11 remember that -- that reference?</p> <p>12 A. I did make a reference to that.</p> <p>13 Q. Okay. When you described in media state</p> <p>14 reaction to tribal -- the tribal lending model as</p> <p>15 being Byzantine, what did you mean by that?</p> <p>16 A. I don't know that I can speak to exactly</p> <p>17 what I meant. It's -- that was a -- in fact, I</p> <p>18 don't even know the context for when that was --</p> <p>19 that was originally said. It's been, I think, taken</p> <p>20 out of context a number of times. But I can't speak</p> <p>21 to exactly what I was referring to.</p> <p>22 Q. Well, I guess that's why I was -- when I</p> <p>23 asked you whether there was some frustration with</p> <p>24 state regulatory response to tribal lending, I</p> <p>25 wasn't talking specifically about document P-274. I</p>	<p style="text-align: right;">Page 123</p> <p>1 Q. I understand.</p> <p>2 A. -- something about it, but that's about it.</p> <p>3 Q. Well, I mean, you're not an attorney. I'm</p> <p>4 certainly not asking for anything you're getting</p> <p>5 from attorneys. But you're also, you know, a very</p> <p>6 smart guy who pays attention to a lot of stuff,</p> <p>7 like, for example, the Colorado and California cases</p> <p>8 that you mentioned. Those are cases that you</p> <p>9 studied, right, before you decided to take the</p> <p>10 company down this path? Am I right?</p> <p>11 MR. SCHEFF: Object to the form.</p> <p>12 A. I -- I read those before, as a company, we</p> <p>13 ultimately decided to move down that path, yes.</p> <p>14 BY MR. ACKELSBERG:</p> <p>15 Q. And you're also familiar in litigation</p> <p>16 around the country, whether in the bank context or</p> <p>17 the tribal context, that the argument has been made</p> <p>18 saying that whatever tribes have -- well, let me</p> <p>19 just -- let me just sort of paraphrase the argument.</p> <p>20 So -- and just ask if you're familiar with this</p> <p>21 argument.</p> <p>22 That whatever it is that the tribes have</p> <p>23 the ability to do, if somebody else is really doing</p> <p>24 it in the tribe's name, that's different, that</p> <p>25 that's -- that other person might actually be the</p>
<p style="text-align: right;">Page 122</p> <p>1 was really just -- just interpreting what you were</p> <p>2 saying and the Byzantine reference, that there was</p> <p>3 some frustration that the states were not fully</p> <p>4 appreciating what Think Finance was trying to do?</p> <p>5 MR. SCHEFF: Object to the form.</p> <p>6 A. I guess I wouldn't really speak to</p> <p>7 frustration. That's a nature of serving this</p> <p>8 customer. I mean, we are serving a customer that,</p> <p>9 although they are two-thirds of the U.S., still</p> <p>10 wasn't particularly well-known by policymakers.</p> <p>11 Their needs for credit, the real-world alternatives</p> <p>12 they have are not particularly well-known. I think</p> <p>13 it's just sort of a statement of fact.</p> <p>14 And, again, you know, in here I was trying</p> <p>15 to -- and, again, I don't know exactly what the</p> <p>16 purpose of this was, but it -- to me it seems to be</p> <p>17 just trying to sort of recite the realities of --</p> <p>18 of, you know, the business that we were in.</p> <p>19 BY MR. ACKELSBERG:</p> <p>20 Q. Now, one of -- you're familiar with an</p> <p>21 argument called "true lender," right?</p> <p>22 A. I have -- have heard of that. I believe</p> <p>23 it's a not particularly well-defined largely legal</p> <p>24 fiction. That's -- you know, I'm not an attorney.</p> <p>25 I know --</p>	<p style="text-align: right;">Page 124</p> <p>1 lender using the tribe as a cover for doing what</p> <p>2 they can't do directly. That's -- that's the</p> <p>3 argument that -- you understand that's the true</p> <p>4 lender argument, right?</p> <p>5 MR. SCHEFF: Object to the form.</p> <p>6 To the extent you can answer that question</p> <p>7 without disclosing communications you've had with</p> <p>8 counsel, please do so. If not, just tell us.</p> <p>9 A. And you're asking my opinion. As I said,</p> <p>10 in my awareness of that -- we stipulated that I'm</p> <p>11 not an attorney -- I have read certain cases. What</p> <p>12 is striking to me, and why I do refer to the legal</p> <p>13 fiction, is -- and I actually said this to the</p> <p>14 CFPB -- is that the -- there seems to be different</p> <p>15 definitions. Different judges have ruled in</p> <p>16 different ways.</p> <p>17 There doesn't seem to be any understanding</p> <p>18 of what this term actually means and whether it has</p> <p>19 any real legal background. That's from my limited</p> <p>20 under- -- you know, reading of the various rules</p> <p>21 that have happened and how judges seem to rule both</p> <p>22 ways, some throwing out the whole concept saying,</p> <p>23 oh, if a -- if a bank originated that loan, a bank</p> <p>24 originated that loan; others who -- who take this</p> <p>25 concept and rule in different ways around it. So I</p>

1 don't know what it means other than it has been a
2 claim made by certain people who are trying to, you
3 know, have a lawsuit against some sort of lending
4 product.

5 BY MR. ACKELSBURG:

6 Q. Well --

7 A. I'm -- hopefully I answered that
8 appropriately.

9 Q. But it's a debate -- it's a debate, as you
10 said, that you've been aware of?

11 A. Yes.

12 Q. Okay. And, in fact, there have been --
13 during your time as CEO at Think Finance, there, in
14 fact, were executive discussions about trying to
15 mitigate true lender risk. You remember those
16 discussions, don't you?

17 MR. SCHEFF: Object to the form.

18 To the extent you can answer that question
19 without disclosing communications with counsel,
20 please do so. If you can't, let us know.

21 MR. SHELTON: And by communications
22 with counsel, to be clear, that means both outside
23 counsel at all firms, like Mr. Scheff, but also
24 in-house counsel like Ms. Cutrona and others who are
25 employed as attorneys who you have worked with.

1 purpose without having counsel involved in that.

2 BY MR. ACKELSBURG:

3 Q. Do you remember -- do you remember the
4 ongoing project called "tribalization" or "tribal
5 restructure"? Do you remember that as a -- as a
6 subject of executive attention during this period of
7 time?

8 A. Yeah, we had -- I heard some ongoing
9 evolution, if you will, of the -- of the tribal
10 relationship and the tribal contractual relationship
11 that we broadly based referred to as that.

12 Q. And you remember the discussions that --
13 where you were trying to improve the optics of the
14 way that -- the way those relationships appear?

15 MR. SCHEFF: Object to the form.

16 You can answer the question.

17 A. Should I -- are you wanting do I -- do I
18 remember or -- I'm trying to think if there was
19 conversations that would have been without counsel,
20 and I don't know that there would have been.

21 THE WITNESS: So I -- I -- can I
22 say --

23 MR. SCHEFF: If -- let's talk outside.

24 MR. SHELTON: Off record for a second.

25 THE VIDEOGRAPHER: We are off the

1 A. It's pretty -- pretty hard for me to answer
2 something like this without referring to my
3 communications with in-house or outside counsel.

4 BY MR. ACKELSBURG:

5 Q. Well, yeah, and I'm not -- I'm certainly
6 not asking about that. I'm asking in your
7 communications, say, with Jason Harvison in
8 structuring -- structuring the loans, structuring
9 the programs, the relationships with the tribes, do
10 you remember discussions about mitigating true
11 lender risk?

12 MR. SCHEFF: Object to the form. Same
13 instruction.

14 MR. SHELTON: And I'll just say again,
15 even if someone like Mr. Harvison was in the room,
16 if Ms. Cutrona or legal counsel were also in the
17 room and providing legal advice, then we would ask
18 you not to answer. And if you have any questions
19 about whether or not you can answer, we are happy to
20 step outside in the hall and discuss this briefly
21 and then come back in. Do you understand?

22 THE WITNESS: I do. Thank you.

23 A. I don't think I would have been talking to
24 Jason or anybody else about, you know, anything in
25 regard to structuring a legal agreement for this

1 record. The time is 11:56 a.m.

2 (Break taken, 11:56 a.m. to 12:01 p.m.)

3 THE VIDEOGRAPHER: We are back on the
4 record. The time is 12:01 p.m.

5 BY MR. ACKELSBURG:

6 Q. So before we broke, Mr. Rees, I was asking
7 you about executive discussions about improving the
8 optics in the relationship with the tribes, and then
9 you said you wanted to talk with counsel. Can you
10 answer the question now?

11 A. Yeah, so what I can't directly refer to is
12 sort of the -- any legal strategies in terms of how
13 that the tribal contracts and relationships were --
14 were evolved. I'm not aware of any -- any
15 communications that happened where either in-house
16 counsel or outhouse counsel wasn't there.

17 However, the overall, what we would
18 consider strengthening of the programs by really
19 working with the tribes to help build up their staff
20 and to be ready to support what was a relatively
21 fast-growing business, that would have happened
22 with, say, Michelle and Jason without Sarah in the
23 room. So the operational improvements, absolutely,
24 would have happened, and I do remember those.

25 MR. SHELTON: And by Sarah, just to

<p style="text-align: right;">Page 129</p> <p>1 confirm, you're talking about Sarah Cutrona, general 2 counsel, correct? 3 THE WITNESS: Yes. Thank you. 4 BY MR. ACKELSBURG: 5 Q. But in -- and in the discussions with the 6 operational staff, with Michelle and Jason, for 7 example, that you do remember that -- that the -- 8 that with regard to the things that you mentioned, 9 as examples, getting up staff and getting them -- 10 building up competencies at the tribal level, that, 11 in part, this was to improve the optics, right? You 12 remember that -- you remember that term being used, 13 don't you? 14 MR. SCHEFF: Object to the form. 15 A. Well, as -- as I've said, the primary 16 driver of the work that was done by Michelle and 17 Jason with the tribes to continue to expand their 18 capabilities is support the rapid growth of 19 business. The primary thing was to support the fact 20 that these were rapidly growing businesses. 21 BY MR. ACKELSBURG: 22 Q. I understand that. I'm just saying -- 23 A. And. 24 Q. -- do you remember the use of the term -- 25 MR. SCHEFF: Let him finish his --</p>	<p style="text-align: right;">Page 131</p> <p>1 yes, that's right. 2 Q. And that's where the -- and when the 3 companies began in the installment loan business 4 first with First Bank of Delaware, again, it was the 5 Legacy platform, right? 6 A. Yes. 7 Q. And that -- and the tribe -- the tribal 8 versions of that were on the Legacy platform, right? 9 Not the -- not Mobiloans, the installment loan. 10 A. Yeah, and I -- the only reason I -- at some 11 point in time I believe that -- that the Legacy 12 program for some of the tribal products was shifted 13 to another platform provider. 14 Q. Well -- 15 A. So I don't mean to be overcomplicated here, 16 but, generally speaking, though, when we launched 17 the tribal programs, those -- the installment loan 18 programs, they were on the Legacy platform. That's 19 probably what you're looking for. 20 Q. And you were mentioning before when -- when 21 RISE was first developed, when the company was 22 moving away from the state licensed payday products 23 to state licensed installment loan products, that 24 too, that product also was housed on the Legacy -- 25 on the Legacy platform, right?</p>
<p style="text-align: right;">Page 130</p> <p>1 BY MR. ACKELSBURG: 2 Q. -- the use of the term "optics"? 3 MR. SCHEFF: Let him -- let him finish 4 his answer. 5 A. So my -- my memory is that the 6 communications around sort of the additional things 7 that we were trying to do with the legal 8 arrangements would have been based on interactions. 9 And I believe always had a -- one of our attorneys 10 in the room for the legal strategies for going 11 forward with the relationships. So I'm trying to 12 distinguish between the operational, which would 13 have been handled directly by me and the 14 relationship managers, strengthening those, and then 15 any -- any specific legal changes in the contractual 16 relationships. Is that distinction clear? 17 Q. Let me go back to when we were talking 18 about the three platforms before. With regard to 19 the product platforms, there was a Legacy platform 20 and then there was the CoreCard platform, right? 21 A. Yes. 22 Q. Okay. And the Legacy platform was where 23 the original PayDay One product was -- was housed, 24 right? 25 A. First started on the PayDay One product,</p>	<p style="text-align: right;">Page 132</p> <p>1 A. Again, just for clarity, there had been a 2 movement towards longer-term installment loans on 3 the PayDay One platform. The RISE was a rebranding 4 of that platform and a change in the pricing 5 structure. 6 Q. But still using the -- 7 A. Still all using that platform, that's 8 correct. 9 Q. And then the risk and analytics platform, 10 that's pretty much common across products, right? 11 MR. SCHEFF: Object to the form. 12 A. I believe it is, yes. 13 BY MR. ACKELSBURG: 14 Q. And that's true of the marketing platform 15 as well, right? 16 MR. SCHEFF: Object to the form. 17 A. There wasn't a technology marketing 18 platform, per se, but the channels that were used 19 were consistent, although somewhat different, 20 between the products. For instance, I think some 21 of -- some of the marketing channels were exclusive 22 to some -- some lending operations. 23 BY MR. ACKELSBURG: 24 Q. Okay. Now, at the time of the split -- or 25 the spinoff of Elevate, the -- was -- how did you</p>

1 handle the transfer of the technological know-how
2 with regard to the Legacy platform and the risk and
3 analytics platform to the Elevate side? How did
4 that work?

5 MR. SCHEFF: Object to the form.
6 You can answer.

7 A. Yeah, my understanding was there was,
8 essentially, a copy because both the -- the direct
9 products and the licensed products were using the
10 same platform. So my understanding, I'm -- I think
11 this is correct from a technical perspective. I may
12 be missing some of the subtleties. Basically, a
13 copy was done, and each entity ended up with a copy
14 of the technology IP at the time.

15 BY MR. ACKELSBURG:

16 Q. Okay. And do you know -- you remember that
17 you had to go through an evaluation process as part
18 of the spinoff?

19 A. I remember that. Not the specifics, but I
20 do remember that Chris did some sort of an
21 evaluation. I don't know exactly what that was.

22 Q. Do you -- do you remember if the Legacy
23 platform and the risk and analytics platform were
24 ever valued as part of that transaction?

25 A. I don't know the answer to that.

1 Q. Do you remember the end of 2012, traveling
2 to [REDACTED] with Victory Park?

3 A. Yes.

4 Q. And what was the purpose of that trip?

5 MR. SCHEFF: Irv, are you done with
6 this one?

7 MR. ACKELSBURG: Yes.

8 A. Victory Park was raising money for their
9 funds, and because we were a -- my recollection,
10 it's been a couple years, since we were a portfolio
11 company, they wanted us to come out and talk about
12 what -- what the, at the time, Think Finance product
13 was and why [REDACTED] should be interested in
14 investing in Victory Park or -- I can't remember if
15 they invested or -- or provided debt financing to
16 Victory Park Capital. But in any event, we were
17 helping them sell [REDACTED] as a client.

18 BY MR. ACKELSBURG:

19 Q. Basically, you were -- you were trying to
20 sell Think Finance, right?

21 MR. SCHEFF: Object to the form.

22 A. My recollection, they asked about Think
23 Finance, but I thought we were out there to help
24 with their broader relationship management with --
25 with [REDACTED]. I think that was

1 the name for the entity that we were talking to.

2 MR. ACKELSBURG: All right. So we're
3 up to, what, Document 276? 276. All right. I want
4 to show you a dec, and there's an e-mail with it.
5 Why don't we just call the -- the exhibit the e-mail
6 plus the attached dec and. . .

7 (Exhibit No. 276 marked.)

8 MR. SHAPIRO: This is all 276?

9 MR. ACKELSBURG: Yes.

10 A. (Reviews document.)

11 Okay.

12 BY MR. ACKELSBURG:

13 Q. So, Mr. Rees, before, earlier in the
14 deposition when I asked you about the
15 relationship -- the nature of the relationship
16 between Think Finance and Victory Park, you said
17 Victory Park was really more in the nature of a
18 lender than an investor in Think Finance, right?

19 MR. SHAPIRO: Objection; that's not
20 his testimony.

21 BY MR. ACKELSBURG:

22 Q. Well. . .

23 A. They were not a --

24 MR. SHAPIRO: Well, wait. It's not my
25 witness, but I would like -- I would like counsel to

1 pose a question.

2 MR. ACKELSBURG: Oh, okay. That's
3 fine.

4 BY MR. ACKELSBURG:

5 Q. Was Think -- was the relationship between
6 Think Finance and Victory Park more in the nature of
7 a -- from your standpoint, more in the nature of a
8 lender to Think Finance rather than an investor in
9 Think Finance?

10 A. They did not invest as an equity investor
11 in us, and it was more in the nature of a debt
12 facility.

13 Q. Okay. And your understanding of the trip
14 to [REDACTED] was to try to raise more capital for
15 that lending facility; am I right?

16 MR. SCHEFF: Object to the form.

17 A. As -- I guess as I said before, I would
18 have characterized the primary thing we were doing
19 was helping Victory Park Capital with a relationship
20 that they're trying to build with [REDACTED] that was
21 supporting -- you know, we assumed that they would
22 come into the facility that supported the growth of
23 this business as well as the growth of other
24 businesses that Victory Park Capital was -- was
25 investing in.

1 BY MR. ACKELSBURG:

2 Q. But your presence at the meeting --

3 A. Or was -- was lending in.

4 Q. But your presence at that meeting wasn't
5 about their other business, it was about their --
6 their lending to Think Finance, right?

7 A. Yes, I was just trying to respond to your
8 question. So, yes, I -- I presented what I could
9 present about, which was our -- our product and --
10 and assuming that [REDACTED] put money into that product,
11 how it would function. But, like I said, I think
12 they were trying to look for a broader relationship
13 with [REDACTED] than just for -- for this one
14 investment opportunity.

15 Q. I understand. But you weren't there for
16 that broader relationship, you were there for --
17 specifically, for the -- you weren't raising money
18 for Victory Park, in general, were you? You were --

19 MR. SCHEFF: Objection; asked and
20 answered.

21 You can answer again.

22 A. I was -- I viewed that my role was to help
23 them build their relationship and -- but, obviously,
24 as I have been saying, I communicated about this
25 product, the Think Finance product.

1 BY MR. ACKELSBURG:

2 Q. Well, at this point in time, you were
3 trying to build the volume of the tribal products,
4 right?

5 MR. SCHEFF: Object to the form.

6 A. Ensuring that there was adequate capital to
7 support the growth of the -- of the tribal business
8 was something that we were, you know -- you know,
9 helping out where we could, yes.

10 BY MR. ACKELSBURG:

11 Q. In fact, there were frustrations from time
12 to time with Victory Park that they weren't
13 delivering capital that they had previously
14 promised. I mean, you were relying on Victory
15 capital coming in with the funds that you needed to
16 put these loans on the street. Am I right?

17 MR. SHAPIRO: Object to form.

18 MR. SCHEFF: Object to the form.

19 A. I mean, that was the structure of -- you
20 know, the structure of the deal was that they would
21 be able to buy whatever participations they wanted
22 to buy, and the product would grow either based on
23 this purchasing entity or -- or something else
24 coming along. And to the extent that Victory Park
25 Capital didn't have an interest or didn't have the

1 capacity, then -- then that would have an

2 understandable impact on the growth of the business.

3 BY MR. ACKELSBURG:

4 Q. Right. And so the idea behind the trip to
5 [REDACTED] was your hope that this would increase the
6 capacity for the product, right?

7 MR. SCHEFF: Object to the form.

8 You can answer the question.

9 A. We were there helping Victory Park Capital
10 get the funding that we hoped would support the
11 growth of this -- of this business.

12 BY MR. ACKELSBURG:

13 Q. Okay. Thank you.

14 And who went to -- by the way, you used
15 the term [REDACTED] It's [REDACTED], right?

16 A. Yes.

17 Q. Standing for the [REDACTED]

18 [REDACTED]?

19 A. I don't know what the "C" stands for.

20 Q. But you understood this to be the --
21 basically, the investment vehicle of the government
22 of [REDACTED], right?

23 A. I think they call it a sovereign wealth
24 fund.

25 Q. Okay.

1 A. So apparently lots of -- I don't know much
2 about this, but apparently lots of countries have
3 their own investment arms that they invest in things
4 around the world.

5 Q. And who went on that trip to [REDACTED]?

6 A. Myself, Chris Lutes, and the person
7 named -- I believe his name was Badr Qureshi who
8 was -- worked for Chris in the --

9 Q. In the treasury department, right?

10 A. I think he was treasury, that's correct.

11 Q. And who went on the Victory Park side?

12 A. It's been a few years. I'm guessing, I
13 think -- I think the answer is -- I mean, you would
14 know. I think it was Brendan and Tom, but I'm not
15 sure.

16 Q. And by Brendan, you mean Brendan Carroll?

17 A. Yes.

18 Q. By Tom, you mean Tom Welch?

19 A. Yes. Although, it might not have been Tom
20 Welch at the time. I -- actually, I'm pretty
21 certain -- certain it was Brendan. I don't know who
22 else was there. I think there were two people.

23 Q. Okay. And we are looking at the dec that
24 you presented to the folks at [REDACTED]?

25 A. It -- at least it was a draft version of

1 the dec that was presented at [REDACTED]
 2 Q. I mean, do you see anything striking in
 3 there that -- that suggests that this was -- that
 4 the information you presented to [REDACTED] was different
 5 than what appears in this document?
 6 MR. SCHEFF: Object to the form.
 7 MR. SHELDON: Object to form.
 8 BY MR. ACKELSBURG:
 9 Q. You can answer.
 10 MR. SCHEFF: Yeah, you can answer the
 11 question.
 12 A. No.
 13 BY MR. ACKELSBURG:
 14 Q. Okay. Thank you.
 15 MR. SHAPIRO: You asked for a notice
 16 at 12:20.
 17 MR. ACKELSBURG: It's 12:20. Okay.
 18 Thank you.
 19 Okay. I think -- I think we'll leave that
 20 document.
 21 (Exhibit No. 277 marked.)
 22 BY MR. ACKELSBURG:
 23 Q. Here's another one.
 24 A. So we're done with this?
 25 Q. Yeah.

1 MR. SCHEFF: We're done with that.
 2 A. Did you want a sticker on this one?
 3 MR. SCHEFF: The sticker is on the
 4 e-mail. It's one exhibit.
 5 BY MR. ACKELSBURG:
 6 Q. So I want to give you an opportunity to
 7 review this document, Exhibit 277.
 8 A. Do you know what the date is on this?
 9 MR. SCHEFF: Is there an e-mail copy?
 10 BY MR. ACKELSBURG:
 11 Q. Yes. No, there's no e-mail. I believe
 12 there is -- that there is metadata, and I'm going to
 13 tell you what the metadata says. It says that
 14 you're both the author and the custodian, and the
 15 date on the metadata is August 8, 2011.
 16 A. Okay. Thank you.
 17 Q. I don't -- again, I can't attest to --
 18 that's how we received it. That was -- that was
 19 attached to the document that we received. Okay?
 20 MR. SCHEFF: I'll find out if there's
 21 an e-mail attached.
 22 MR. ACKELSBURG: There is?
 23 MR. SCHEFF: I don't know.
 24 MR. ACKELSBURG: I don't think there
 25 is.

1 MR. SCHEFF: There typically is. I
 2 mean, there either is or isn't.
 3 A. Is it inappropriate for me to write what
 4 that date was on here so I can --
 5 BY MR. ACKELSBURG:
 6 Q. No, no. Well --
 7 MR. SCHEFF: Say it again.
 8 A. Yeah, just I'm not going to remember the
 9 date.
 10 BY MR. ACKELSBURG:
 11 Q. You can write on the exhibit. That's fine.
 12 A. Thank you. I'm sorry, what was that again,
 13 August?
 14 Q. August 8, 2011.
 15 A. Thank you.
 16 (Reviews document.)
 17 Q. And while you review it, I'm going to check
 18 and see if there was an e-mail.
 19 MR. ACKELSBURG: It's freestanding.
 20 MR. SCHEFF: See if Dave agrees.
 21 MR. ACKELSBURG: Okay.
 22 A. Okay. Thanks.
 23 BY MR. ACKELSBURG:
 24 Q. So explain to me -- first of all, is
 25 this -- is this familiar to you, either this

1 particular document or -- or it looks like documents
 2 that you -- that you saw in the past or. . .
 3 A. I mean, there's components of it that are
 4 familiar, but I don't -- I mean, "IPO Roadshow
 5 Presentation, Breakout 1" that seems sort of odd
 6 for -- for 2011. We were talking about taking the
 7 company public, and it had been something that we
 8 had hoped to be able to do. But, I mean, I don't --
 9 in 2001 --
 10 MR. SCHEFF: 2011.
 11 A. I mean, 2011, I don't -- I don't remember
 12 that we actually did do any roadshow presentations
 13 in breakout No. 1. And so I -- I can't speak to
 14 exactly what this is, but the materials in this,
 15 I've seen in various other presentations, for the
 16 most part.
 17 BY MR. ACKELSBURG:
 18 Q. And I'm sorry for any confusion caused by
 19 the date. Again, I'm just relaying to you what
 20 the -- what the metadata says. I mean, I --
 21 A. I'm actually more reacting to the breakout
 22 No. 1.
 23 Q. Yeah.
 24 A. Because breakouts, in my mind, are
 25 generally for team meetings where, like, a -- we

1 would have breakouts at town hall meetings where we
2 would work on a topic and the people would, you
3 know, present back their -- what they came up with.

4 Q. But you wouldn't be talking about an IPO at
5 a town meeting, would you?

6 A. We -- we might. And, I'm sorry, I said
7 town hall. I meant to say the quarterly business
8 reviews. Quarterly business reviews were typically
9 the -- the VP -- or directors and above in the
10 company, maybe 50 people. And we would have
11 discussed things, like, our plans for going public
12 and what we thought needed to happen in order to
13 have a successful IPO at some point in time.

14 Q. Now, at some point, you were talking to
15 investment bankers about the possibility of going
16 public, right?

17 A. Yes.

18 Q. And would you need to -- would -- forget
19 about need. Would you, in the course of those
20 discussions, have presentations where you would use
21 decs that looked like this with the -- forget about
22 breakout No. 1, but the information in here would be
23 the kind of information that you would be
24 communicating to potential backers of an IPO?

25 MR. SCHEFF: Object to the form.

1 Q. Mr. Rees, I want to move to the decision of
2 the company to pursue possible tribal partnerships
3 and the -- the origins of those three contracts.
4 And before I do, there's a number of people that
5 appear in the documents sort of connected to either
6 the decision to do tribal or one of the particular
7 tribal relationships. And I am going to go through
8 just a couple of names and ask you, one, how you
9 first connected to that person, and, two, what role,
10 if any, they played in the development of either
11 Think's decision to go tribal or to -- in one of the
12 particular relationships.

13 Okay. So the first name is a name that we
14 mentioned before, and that's Steve Haynes. How did
15 you first connect with Steven Haynes?

16 A. I actually don't know. I met him once at
17 an admiral's club in an airport for about
18 15 minutes. I think that's the only time I met him.
19 After all of this discussion, I should know all the
20 interrelationships, but I can't remember who first
21 contacted him or how we got in touch with him as a
22 company.

23 Q. And you do know that there was some role
24 that he played with regard to the funding of -- of
25 Plain Green loans, correct?

1 You can answer the question.

2 A. Much of the material would be things we
3 would discuss with an investment banker. But the
4 fact that it says "Critical to achieve sexy spin on
5 risk management capabilities" makes me think we
6 probably didn't present this to a -- to an
7 investment banker.

8 BY MR. ACKELSBURG:

9 Q. Right. So this -- this was probably meant
10 for internal purposes, and then it would be -- it
11 would be tweaked if -- if it were then turned into a
12 production for a potential backer?

13 A. I don't know about tweaked, but it does
14 seem like this is for internal purposes of some
15 sort. I agree with that.

16 MR. ACKELSBURG: All right. What time
17 are we at?

18 MR. SHELDON: 27.

19 MR. ACKELSBURG: Let's just break now.

20 THE VIDEOGRAPHER: We're off the
21 record. The time is 12:27 p m.

22 (Break taken, 12:27 p m. to 1:13 p m.)

23 THE VIDEOGRAPHER: We are back on the
24 record. The time is 1:13 p m.

25 BY MR. ACKELSBURG:

1 A. Yeah. I mean, I --

2 MR. SCHEFF: Object to the form.

3 Go ahead.

4 A. I really think of Haynes' role as the one
5 who was helping us identify potential travel
6 partners. He was somebody who was represented to us
7 as having some experience working with Native
8 American tribes before and could help us with
9 understanding how to do business in Indian country
10 in a way that we didn't.

11 BY MR. ACKELSBURG:

12 Q. And through who did you learn about Haynes'
13 ability to do that?

14 A. I don't know. He came -- he -- I -- like I
15 said, I met him, I think, once. Maybe there was
16 another time. I'm not aware of any other time. And
17 I really literally can't remember how we came into
18 contact with him.

19 Q. Okay. What about Alonzo Primus?

20 A. Oh, Alonzo. Yeah, he ran First Bank of
21 Delaware. I had actually known him as we were
22 evaluating, you know, banking relationships. I
23 mentioned we had the banking relationship before I
24 joined the company, and there was a period of time
25 where a lot of, you know, bank FinTech partnerships

<p style="text-align: right;">Page 149</p> <p>1 were happening. We talked to him early. It sort of</p> <p>2 probably took a couple of years from when I first</p> <p>3 was introduced to Alonzo to when we had a business</p> <p>4 relationship at First Bank of Delaware.</p> <p>5 Q. And what role, if any, did he play in the</p> <p>6 years during which Think had these relationships</p> <p>7 with tribes?</p> <p>8 MR. SCHEFF: Object to the form.</p> <p>9 You can answer the question.</p> <p>10 A. So for the tribes, the -- I'll tell you,</p> <p>11 the only -- the relationship that I'm directly aware</p> <p>12 of was he was helping us find -- I believe it was</p> <p>13 potential banking relationships or ACH</p> <p>14 relationships. That's all I'm aware of.</p> <p>15 BY MR. ACKELSBURG:</p> <p>16 Q. You're aware that he had a consulting</p> <p>17 partnership with Steven Haynes?</p> <p>18 A. I wasn't aware of that.</p> <p>19 Q. What about Mark Curry?</p> <p>20 A. Mark Curry was on the board of the Online</p> <p>21 Lenders Association. I knew him through that. And</p> <p>22 he was actually the person who -- I don't really</p> <p>23 quite know how it happened, but he somehow heard</p> <p>24 that I was looking into, you know, whether it made</p> <p>25 sense for us to provide technology to tribal lenders</p>	<p style="text-align: right;">Page 151</p> <p>1 and introduced us to them, but I don't know exactly</p> <p>2 what role he played.</p> <p>3 BY MR. ACKELSBURG:</p> <p>4 Q. And what's your understanding of Mark</p> <p>5 Curry's background with regard to, let's say, the</p> <p>6 payday lending world?</p> <p>7 MR. SCHEFF: Object to the form.</p> <p>8 You can answer the question.</p> <p>9 A. So he was an online lender. Actually, I</p> <p>10 don't know much about the products he offered, but</p> <p>11 he was somebody that was instrumental in</p> <p>12 establishing the online lender's alliance, along</p> <p>13 with other people. So he was pretty well-known in</p> <p>14 the industry as sort of an early online lender, but</p> <p>15 I don't -- I don't know much about his products or</p> <p>16 anything other than that.</p> <p>17 BY MR. ACKELSBURG:</p> <p>18 Q. He comes out of Kansas City originally,</p> <p>19 right?</p> <p>20 A. Now that you say that, I think he does come</p> <p>21 out of Kansas City. I think he lives in Puerto Rico</p> <p>22 now.</p> <p>23 Q. Right.</p> <p>24 A. But I think he did come out of Kansas City.</p> <p>25 Q. And Kansas City was a very active center of</p>
<p style="text-align: right;">Page 150</p> <p>1 like we did with banks. And he actually introduced</p> <p>2 us to the -- the Otoe-Missouria tribe in Oklahoma.</p> <p>3 Q. And what's your understanding of his</p> <p>4 connection to the Otoe-Missouria tribe?</p> <p>5 A. He's a service provider to their -- one of</p> <p>6 their other lending programs. So Otoe-Missouria had</p> <p>7 a -- at least one, if not more than one, tribal</p> <p>8 lending program before we became introduced to them.</p> <p>9 And he was the service provider to -- at least one,</p> <p>10 if -- if not more, I don't know. But at least one</p> <p>11 of those programs.</p> <p>12 Q. Referring to American Web Loan?</p> <p>13 A. I think that's the name. I'm -- I'm not</p> <p>14 sure, but I think that's the name.</p> <p>15 Q. And when you say that he was a service</p> <p>16 provider, are you saying that he -- your</p> <p>17 understanding was that he was performing a role for</p> <p>18 that other lending product similar to the kind of</p> <p>19 role that Think Finance was ultimately playing with</p> <p>20 regard to Great Plains Lending?</p> <p>21 MR. SCHEFF: Object to the form.</p> <p>22 You can answer the question.</p> <p>23 A. I actually don't know what the contractual</p> <p>24 relationship was between him and the tribe. He</p> <p>25 seemed to have a good relationship with the tribe</p>	<p style="text-align: right;">Page 152</p> <p>1 payday lending industry; am I right?</p> <p>2 MR. SCHEFF: Object to the form.</p> <p>3 A. I -- I know there were a number of</p> <p>4 businesses that started up out of Kansas City. You</p> <p>5 know, we're Texas based, so didn't have a whole lot</p> <p>6 of connection up there.</p> <p>7 BY MR. ACKELSBURG:</p> <p>8 Q. You have heard of Scott Tucker?</p> <p>9 A. Oh, yes.</p> <p>10 Q. And that -- it was a fairly large</p> <p>11 constellation of -- of payday lending related</p> <p>12 organizations connected to Scott Tucker?</p> <p>13 A. Yeah, I --</p> <p>14 MR. SCHEFF: Object to the form.</p> <p>15 A. I have no idea -- I have no reason to</p> <p>16 believe that -- that Mark Curry was connected with</p> <p>17 that at all. He may be. They were both out of</p> <p>18 Kansas City. But I can't speak to any relationships</p> <p>19 between them.</p> <p>20 BY MR. ACKELSBURG:</p> <p>21 Q. All right. What about Rick Eckman, when</p> <p>22 did you first connect with Rick Eckman?</p> <p>23 A. Rick Eckman, an attorney with Pepper</p> <p>24 Hamilton, I believe.</p> <p>25 Q. That's correct.</p>

1 A. I believe -- and I know for a fact that he
2 was First Bank of Delaware's attorney for a period
3 of time. For some reason, I think he represented us
4 at one point in time, but I don't remember in which
5 connection. And then I think he also represented
6 one -- at least one of the tribal lenders as well.

7 Q. Might he have been the -- the one that
8 connected the company to Steven Haynes?

9 MR. SCHEFF: Object to the form.

10 BY MR. ACKELSBURG:

11 Q. If you remember.

12 A. I don't remember that. Maybe he did.

13 Q. Okay. What about Claudia Callaway?

14 A. Oh, Claudia Callaway, an attorney that
15 actually had worked with PayDay One before I joined
16 the company, was -- you know, advised Mike Stinson
17 in how to set up the business.

18 MR. SHELTON: Let me just caution the
19 witness. Claudia Callaway, as I understand, was
20 outside counsel to Think Finance, correct?

21 THE WITNESS: She was outside counsel
22 to Think Finance, correct.

23 MR. SHELTON: So in answering his
24 question, please don't reveal any information that
25 Claudia communicated to you or that you communicated

1 pursue a tribal partnership after -- we've had some
2 testimony of this before, and I'm not going to get
3 into too much detail about it, but you got -- just
4 to recount what happened, you were notified in
5 October of 2010 by First Bank of Delaware that --
6 that, basically, the FDIC had told them to stop
7 their involvement, right?

8 MR. SCHEFF: Object to the form.

9 You can answer the question.

10 A. That's actually not true.

11 BY MR. ACKELSBURG:

12 Q. What's not true?

13 A. What you just said.

14 Q. Really?

15 A. We were notified that the bank made their
16 own decision to exit the program, that they were
17 never told by the FDIC to exit the program.

18 Q. Okay. If that's your recollection, that's
19 fine.

20 A. Well, I mean,, we -- that's -- that's
21 specifically what we have been told in writing --

22 Q. Okay.

23 A. -- about the -- about that situation.

24 Q. Okay. And so -- and then we know that
25 the Plain Green -- Plain Green was the first product

1 to Claudia. You can, obviously, answer to the
2 extent it reveals that she was outside counsel. And
3 if he asks you about the number of times or ways you
4 communicated with her, that's okay as well. Do you
5 understand?

6 THE WITNESS: Okay. Thank you.

7 A. So she was outside counsel for initially
8 PayDay One and then remained as outside regulatory
9 counsel with the company until, I'm not sure, maybe
10 2012, 2013, something like that.

11 BY MR. ACKELSBURG:

12 Q. And what about Ed Gehres?

13 A. Oh, Ed Gehres. He was outside regulatory
14 counsel. I hope we're not going to list all the
15 regulatory counsel we used over the years --

16 Q. There were lots.

17 A. -- because there was a lot. And I don't
18 remember the name of the firm that he was with, but
19 he was somebody who -- well, he was just regular
20 outside counsel for the firm, I guess.

21 Q. Do you remember the Patton Boggs white
22 paper?

23 A. Not in any specificity.

24 Q. Okay. Now, why don't -- why don't you
25 just, like, tell us briefly about the decision to

1 that went online, the first tribal product, right?
2 That was the first week of April 2011?

3 A. I'm sorry, did you want the background
4 on --

5 Q. Yeah, I'm just --

6 A. You originally were asking me --

7 Q. I'm just situating --

8 MR. SCHEFF: Wait for his question.

9 BY MR. ACKELSBURG:

10 Q. I'm just situating the -- the timeline.

11 A. Thank you.

12 Q. So in October of 2010, you're notified that
13 for whatever their reasons for leaving --

14 A. The bank is terminating the program.

15 Q. The bank is going to terminate the program.
16 And it's going to be effective at the end of the
17 year, at the end of 2010. And then by April of
18 2011, there was a product online called Plain Green.
19 So we're talking about this period of time between
20 the notification from First Bank of Delaware that --
21 that they're going to terminate and the Plain Green
22 program beginning. Okay?

23 A. Right.

24 Q. All right. So first of all, how is the
25 decision made to pursue a tribal partner?

1 A. So I'll walk through the history as I
2 remember it. We were notified by FBD that they were
3 going to be terminating the program. The program
4 was representing a very significant part of the
5 revenue and net income of the business.

6 We assembled the executive team together
7 that weekend to look at a wide variety of things to
8 do. Continued to grow the -- the existing nonbank
9 product, adding new ones. We looked at
10 opportunities in the UK. We looked at new product
11 opportunities even outside of credit. And sort of
12 moved down a path of -- and including a tribal lend,
13 which is something we hadn't really evaluated in the
14 past. So we took all of those potential business
15 opportunities, began looking into them.

16 We actually ended up doing all of those
17 things. You know, we bought a company in the UK.
18 We launched a prepaid debit card. We launched a
19 rent-to-own product. We enhanced the direct
20 consumer product to grow that more aggressively.
21 And then -- but as we were evaluating all the
22 alternatives -- I'm sorry if I'm doing too much
23 here --

24 Q. That's okay.

25 A. -- but I'm hoping this provides some of

1 what you're looking for.

2 We looked at -- at sort of other tribal
3 lending businesses. There was a couple of court
4 cases at the time that had just been decided in
5 favor of the tribes, one in California and one in
6 Colorado -- I don't know the -- you know, what names
7 those were -- that seemed to specify what it would
8 take for a tribal lending entity to have sovereign
9 immunity and to not be, you know, subject to state
10 law as per the tribal sovereignty would be.

11 We looked at other programs that were out
12 there. And then based on that, then based on --
13 really, you know, based on sort of the evaluation of
14 that by all the parties, including the board, we
15 decided that it made sense to move forward with
16 seeing if we could come up with a suitable tribal
17 relationship where we would provide technology and
18 services to them, very similar to the way we had
19 provided technology and services to the bank.

20 Q. And at that point in time, were other of
21 your peer organizations -- well, let's say within --
22 within the OLA, other than Mark Curry, were there
23 other peer members of OLA that were doing business
24 under the tribal model?

25 MR. SCHEFF: Object to the form.

1 A. I think there were. I don't know that I
2 could name any of them, but I'm pretty sure there
3 were other entities within the Online Lenders
4 Alliance that were licensing technology to tribal
5 lenders as well.

6 BY MR. ACKELSBURG:

7 Q. Now, the first -- my understanding is the
8 first potential partner that the company talked to
9 was Butch Webb in South Dakota. Right?

10 A. Yes.

11 Q. And how did that meeting come to be?

12 A. Actually, our -- the founder of the
13 company, Mike Stinson, had known another gentleman
14 named John Templer, who had known Butch Webb. And
15 when -- I -- I know that was the connection. I
16 don't know exactly how it was sort of connected up
17 that Butch Webb was involved in a tribal lending
18 organization. I don't remember that.

19 But one thing led to another, and we -- we
20 traveled up to North Dakota -- North or South
21 Dakota. I think it was North Dakota -- to meet with
22 him. We ultimately couldn't get comfortable with
23 his -- his business model. It seemed to run
24 contrary to what -- you know, what we and outside
25 counsel thought was the legally justifiable lending

1 structures and --

2 MR. SCHEFF: Stay away from whatever
3 counsel told you.

4 THE WITNESS: Sorry.

5 A. But in -- in any event, we -- I mean, did
6 not like the fact that there didn't seem to be an
7 arm of the tribe in any way involved with the --
8 with the lending operation. So it was -- he was not
9 very happy about it, but -- but we told him we
10 weren't going to do business with him.

11 BY MR. ACKELSBURG:

12 Q. Now, did Claudia Callaway play a role in
13 that connection?

14 MR. SCHEFF: Just answer the question
15 "yes" or "no."

16 A. I just don't know.

17 BY MR. ACKELSBURG:

18 Q. Do you -- do you remember if she was
19 representing Butch Webb back at that time?

20 A. Don't know.

21 Q. Or CashCall or . . .

22 A. I don't know.

23 Q. The -- did Butch Webb have a
24 relationship -- now his company was called Western
25 Sky, right?

1 A. Yes.

2 Q. And did Western Sky have -- have a
3 relationship with CashCall at that time, or did that
4 happen when you turned him down?

5 A. I don't know. He had an operation. My
6 recollection, Western Sky was the name. I don't
7 know if at that time he already had a relationship
8 with -- with CashCall or not.

9 Q. I mean,, you do know eventually --

10 A. Yes.

11 Q. -- he did develop a relationship with
12 CashCall, right?

13 A. Yes.

14 Q. And that was one of your competitors,
15 right?

16 A. They were an online lender. I don't know
17 how much we directly competed with them. They were
18 an online lender, though.

19 Q. Okay. And then the next -- as I understand
20 it, the next tribe that you made contact with was
21 the Otoe-Missouria. Right? And that was through
22 Mark Curry?

23 A. I believe that's correct.

24 Q. And I can show this to you if you want to
25 see it, but we've seen an e-mail from you to the

1 a lot of business opportunities and were -- one of
2 the biggest challenges for launching a product, we
3 launched a number of products over the years, is
4 getting an URL and getting a trademark that -- that
5 you could actually use.

6 So we had already gone and looked at a
7 whole bunch of different potential names and done
8 the trademark searches and found the URLs and bought
9 a few. So we had a handful of things that we were
10 sort of sitting on. So in order to, you know, help
11 them get live, we lice- -- well, not -- we actually
12 sold them, I think, the URL so that they could have
13 that as the basis for the product.

14 BY MR. ACKELSBURG:

15 Q. So, in other words, that -- before you
16 approached the Otoe-Missouria, you already had a
17 website called greatplainslending.com, right?

18 A. Yes.

19 Q. And --

20 A. Actually, I don't know if that's true. I
21 know that we began looking for product names and
22 URLs. Whether that was completed before we met
23 with the Otoe-Missouria, I don't know the exact
24 timing of that.

25 Q. All right. But the start your engines

1 executives, I think it's February 28th, 2011, where
2 you say something to the effect of, "Start your
3 engines," where -- where you thought it looked like
4 the Otoe-Missouria were ready to -- ready to go. Do
5 you remember that?

6 MR. SCHEFF: Object to the form.

7 BY MR. ACKELSBURG:

8 Q. I can show -- I can show you the e-mail.

9 MR. SCHEFF: Lack of foundation.

10 You can answer the question if you can.

11 A. I've seen the e-mail and --

12 BY MR. ACKELSBURG:

13 Q. Okay.

14 A. And I -- I think we believed that the
15 business relationship was going to happen.

16 Q. And, in fact, the e-mail was connected to a
17 signed agreement whereby the tribe agreed to acquire
18 the website, Plain Green, that -- that Think Finance
19 had already -- already owned in terms of the URL,
20 right? I mean,, that was the context of that,
21 correct?

22 MR. SCHEFF: Object to the form.

23 You can answer the question.

24 A. Yeah, you know, as we talked about when the
25 bank relationship was terminated, we were looking at

1 e-mail was at the point where they -- whatever the
2 timing of your original meeting with them was, it
3 was -- it was at the point where they were saying,
4 okay, we'll -- we'll agree to this agreement to
5 assume the responsibility and ownership of that --
6 of that website, that URL, right?

7 MR. SCHEFF: Object to the form; the
8 document speaks for itself. An unmarked document
9 speaks for itself.

10 A. I'm sorry, if you can rephrase the
11 question.

12 BY MR. ACKELSBURG:

13 Q. See, that's the problem. That's the
14 problem.

15 MR. SCHEFF: Why don't you mark the
16 document. Just mark the exhibit as opposed to --

17 MR. ACKELSBURG: I'll be happy to.

18 MR. SCHEFF: -- talking about it in
19 the air.

20 MR. ACKELSBURG: That's fine, Richard.
21 I don't want to have any misunderstandings.

22 MR. SCHEFF: Good.

23 BY MR. ACKELSBURG:

24 Q. This document has already been marked
25 Exhibit 124.

1 A. Thank you.
 2 Q. It looks familiar?
 3 A. Yes.
 4 Q. Okay. We had to do this for your lawyer.
 5 He wanted too make sure you knew what we were
 6 talking about.
 7 MR. SCHEFF: Just ask the question and
 8 stop the chatter.
 9 BY MR. ACKELSBURG:
 10 Q. So this is a signed agreement between --
 11 well, in this case it was TailWind Marketing.
 12 TailWind Marketing was the Think entity that
 13 actually at that point in time owned the URL, right?
 14 A. That appears correct from -- from the
 15 agreement. I didn't really remember that.
 16 Q. Well, in any way case, you signed -- your
 17 signed --
 18 A. Oh, your mic.
 19 Q. In any case, you signed on behalf of
 20 TailWind, and it was a signature from the tribe.
 21 And you expected this to be the beginning of the
 22 first -- the first tribal product, correct?
 23 A. Yes.
 24 Q. Okay. And when you said, "Start your
 25 engines," it was because there already was, in fact,

1 that became Great Plains Lending happened. I don't
 2 know if it happened before or after this. You may
 3 have, you know, documents that say when it happened,
 4 but I don't remember. I view this just as, hey,
 5 we're -- got a new product, it's time to start
 6 working on it.
 7 BY MR. ACKELSBURG:
 8 Q. Okay. Well, maybe this will refresh your
 9 recollection. Plaintiff's Exhibit 120, P-120.
 10 We're looking at a dec that starts at TF-PA 13270.
 11 A. Was this connected to an e-mail?
 12 Q. Connected to an e-mail, I have no idea.
 13 A. Was this sent anywhere? Did this come
 14 from --
 15 Q. This is an exhibit -- I really don't know.
 16 This is an exhibit already identified, and Richard
 17 is checking.
 18 MR. SCHEFF: Yeah, I'll check. In
 19 fairness, we have an agreement, Mr. Rees, that if a
 20 document like this is going to be shown and there's
 21 an e-mail attached, that that e-mail will be shown
 22 as well so the witness is not misled and can
 23 understand the context.
 24 A. Should I look at this?
 25 BY MR. ACKELSBURG:

1 the -- the architecture of this Great Plains Lending
 2 product for which you had acquired the URL, right?
 3 MR. SCHEFF: Object to the form.
 4 A. I mean,, we're ready to launch a new
 5 product. There's always excitement anytime you
 6 launch a new product.
 7 BY MR. ACKELSBURG:
 8 Q. No, but --
 9 A. So I was trying to convey the excitement to
 10 the team that we had a new product that was about to
 11 hit the ground.
 12 Q. Well, I'm sure there was excitement. I
 13 just want to confirm that at this point in time,
 14 there already was a mock-up of a website. The
 15 platform had -- the proper -- the coding had already
 16 begun, that this was, basically, a product that was
 17 ready to go and that that was your -- when you said
 18 start the engines, it was to start the engines of a
 19 loan platform that was already ready to go?
 20 MR. SCHEFF: Object to the form.
 21 A. Like I said, I -- I would read this, and my
 22 memory at the time was, a lot of excitement about
 23 starting a new product like any other product. And
 24 I can't speak to the timing of when any -- any, you
 25 know, development on a -- you know, the actual site

1 Q. Sure.
 2 A. Okay. Thanks.
 3 (Reviews document.)
 4 Q. I am looking at the production. Appears to
 5 be a freestanding document. You're -- you're the
 6 custodian. The author, it just says "ThinkCash
 7 employee." I'm not sure what that means. All
 8 right?
 9 A. Yeah, thank you.
 10 (Reviews document.)
 11 Thank you.
 12 Q. Okay. So you see this -- you've seen this
 13 dec before, right?
 14 A. I don't remember it. It wouldn't surprise
 15 me if I had seen it, though.
 16 Q. Okay. And it doesn't surprise you that --
 17 that -- the date on this doesn't surprise you
 18 given -- given your recollection of the timing of
 19 First Bank of Delaware terminating its -- telling
 20 you that come December, they're not going to do any
 21 more lending and you deciding to go tribal, and --
 22 and because it takes a long time to create a
 23 product, your product people were already hard at
 24 work trying to see what this would look like, right?
 25 MR. SCHEFF: Object to the form.

1 You can answer if you can.

2 A. Sure. I mean,, as I mentioned, we were
3 evaluating a lot of different product opportunities
4 at the time, and we were definitely in full scramble
5 mode to be able to get any that were finally
6 launched up and operational as fast as possible.

7 To your early point, had we actually sort
8 of built out the website, I actually don't know from
9 this. I mean,, a lot of things that we did were
10 just mock-ups and demo. This -- this might have
11 been we actually built out the wire frame for the
12 website or it's just a quicky mock-up of the site
13 for purposes of marketing discussions.

14 BY MR. ACKELSBURG:

15 Q. How long did it -- from your recollection,
16 how long would it take to actually build a platform
17 once you got the go-ahead and you had -- and you had
18 a mock-up already, you had a name, you had a
19 concept, you had --

20 A. Assuming that there weren't any structural
21 changes to the -- to the flow over the flow that was
22 used for other products that we had in market, it
23 wasn't -- it certainly wasn't exactly cut and paste.
24 Like, you could generally put a new design on a --
25 you know, copy the -- the website and put a new

1 design template on top of it for at least, you know,
2 preliminarily to a point that you could look at it.
3 Hopefully I answered.

4 Q. Well, but I asked you in terms of time, how
5 long would that process take --

6 A. Well, I mean, it's sort --

7 Q. -- to go from mock-up to -- to a platform?

8 A. So the market -- the marketing team could
9 get the mock-up done, actually, generally, just in a
10 few days. And then putting the -- the, you know,
11 branding on top could take maybe no more than a
12 couple of weeks. I mean, that doesn't mean it's
13 ready to go live, but at least for purposes of
14 having something to kind of click through, you could
15 do it probably in a couple of weeks.

16 Q. Okay. And you see that, again, it's dated
17 December 2010, that they're already -- it was in the
18 works, discussions with Victory Park by this time,
19 because there's reference to the purchaser of the
20 participation interest being GPL Servicing. You see
21 that, right?

22 A. Yeah, I don't know that there were
23 conversations directly with Victory Park. There may
24 well have been. But this was a period in time that
25 we were, you know, surprised, moving pretty rapidly.

1 I would like to believe that we would have had the
2 discussions with Victory Park Capital before we
3 discussed this with a potential partner, but I can't
4 say that we absolutely did.

5 Q. Well, it --

6 A. And I'm sorry to interrupt. Just to
7 respond, because this was really adapting the
8 existing financing and lending structure that had
9 been sort of adopted and -- by First Bank of
10 Delaware and reviewed by the FDIC. So we thought
11 this was sort of a standard approach that we were
12 using. So I -- like I said, I just can't remember
13 when we began talking to Victory Park Capital.
14 Ultimately, obviously, we did, but I just don't know
15 if it was before or after this document was
16 distributed.

17 Q. Do you remember how the naming occurred --
18 I mean,, who named the -- the special purpose
19 vehicle GPL Servicing, or GPLS? Where did that name
20 come from? That came from Great Plains Lending,
21 right? I mean,, that's what the GPL referenced,
22 wasn't it?

23 A. You're right, it -- it was Great Plains
24 Lending. I just can't remember the timing and who
25 came up with that.

1 Q. It might have been Think, it might have
2 been Victory Park, you're not sure?

3 MR. SCHEFF: Object to the form.

4 THE WITNESS: I can answer?

5 MR. SCHEFF: You can answer.

6 A. I would assume one of the two.

7 BY MR. ACKELSBURG:

8 Q. Okay. But you don't remember the
9 discussions about -- about the creation of a new
10 special purpose vehicle and an investment fund to
11 buy the tribal -- to drive the participations from
12 the tribal --

13 MR. SHAPIRO: Objection; compound
14 question.

15 Can you read the question back so that the
16 witness hears the question exactly?

17 COURT REPORTER: "Okay. But you don't
18 remember the discussions about -- about the creation
19 of a new special purpose vehicle and the investment
20 fund to buy the tribal -- to drive" --

21 BY MR. ACKELSBURG:

22 Q. I asked you --

23 MR. SCHEFF: Hold on. Just wait.
24 Just wait.

25 COURT REPORTER: "You don't remember

1 the discussions about -- about the creation of a new
2 special purpose vehicle and an investment fund to
3 buy tribal" -- "tribal -- to drive the
4 participations from the tribal," and then --
5 BY MR. ACKELSBURG:

6 Q. Well, I'll just ask you a different
7 question rather than trying to -- so as of December
8 of 2010, there -- there was a product, Think --
9 called ThinkCash that operated in partnership with
10 First Bank of Delaware, right?

11 A. Yes.

12 Q. Yeah. And the participations were being
13 purchased by -- by investment funds or special
14 purpose vehicles connected to Victory Park, right?
15 That were buying the participation interests from
16 First Bank of Delaware, right?

17 A. To answer the question, so when the, what
18 was at the time called Universal Fund -- was
19 established and was -- we were really directed by
20 the bank that that's how they wanted to structure
21 the relationship and they wanted a third-party to
22 buy those participations from the ThinkCash product,
23 it was originally a sort of friends and family of
24 the bank that were -- that were invested into that
25 Universal Fund --.

1 At some point in time, Victory Park
2 Capital, you know, came in and bought participations
3 with them. I have to assume by December 2010,
4 Victory Park Capital was involved in the
5 relationship. I don't know exactly under what --
6 you know, there was a couple of evolutions of who
7 was investing and what the naming conventions were.

8 Q. Okay. So we --

9 A. So that's -- I just want to be --

10 MR. SCHEFF: Let him finish.

11 BY MR. ACKELSBURG:

12 Q. So we can start -- so you remember the
13 Universal Fund at one point was --

14 A. Universal Fund -- I think, is what it was
15 called.

16 Q. Universal Fund -- was purchasing the
17 participations, and you said that was -- the
18 investors were mainly family and friends of the
19 bank?

20 A. And I -- that was -- we referred to it as
21 friends and family, but it was -- it was largely
22 people that the bank had known, because the bank had
23 used this structure before. So it was investors in
24 the bank structure were also invited, in the
25 previous one, Universal Fund I, were invited to be

1 part of the Universal Fund --. And then it also
2 expanded. I think there were some additional
3 investors that came in.

4 Q. Like Think Finance? In fact, wasn't Think
5 Finance the largest investor in Universal Fund --?

6 A. That's not my -- that's not my memory.

7 I -- I don't know exactly what the structure of who
8 was invested into --

9 Q. And what about the family and friends of
10 Think Finance, like, your uncle, like. . .

11 A. Oh. Yeah, my -- my uncle did invest. I
12 doubt it was very much money. Wasn't much to -- to
13 invest. But I think that was part of the friends
14 and family. I think there was a -- maybe another
15 board member or two that were -- I think it was
16 broadly at the time if any of them wanted to invest,
17 it was sort of opened to, as we said, friends and
18 family of the company or the bank.

19 Q. Well, when it went -- when it went from
20 Universal Fund I to Universal Fund -- --

21 A. I wasn't involved in Universal Fund I.

22 Q. I know that.

23 A. Okay.

24 Q. But the initial -- the initial seed
25 investment for Universal Fund -- was \$3 million from

1 Think Finance, right?

2 A. I didn't know that. I mean,, I -- Chris
3 Lutes, I'm sure, could do a better job explaining
4 exactly the evolving funding structure of both
5 the -- the bank products and any tribal products
6 than I can.

7 Q. Okay. And then there was -- there was a
8 point in time when the Universal Fund couldn't keep
9 up with the volume that -- couldn't keep up with the
10 success of the product, right?

11 MR. SCHEFF: Object to the form.

12 You can answer the question.

13 A. Actually, I don't know what you're saying.
14 The Universal Fund couldn't keep up, so then it
15 wouldn't be buying participations, so it --

16 BY MR. ACKELSBURG:

17 Q. It didn't have --

18 A. -- stopped buying?

19 Q. -- the capacity to support the volume that
20 Think believed it could generate from the ThinkCash
21 product?

22 MR. SCHEFF: Object to the form.

23 You can answer the question.

24 A. So you're -- I'm just trying to understand
25 the question. So you're saying that there weren't

1 enough investors in that and that they had to stop
 2 buying participations? Because I didn't remember
 3 that they stopped buying participations.
 4 BY MR. ACKELSBURG: Q. I'll ask a different question. You
 5 remember that Think Finance came in and, basically,
 6 bought -- took out the Universal Fund? Do you
 7 remember that?

8 MR. SCHEFF: I'm sorry, could you --

9 MR. SHELTON: I think for clarity of
 10 the record, I think we should say Universal Fund I
 11 or --. I realize it's another few syllables, but
 12 let's just -- I think -- I would appreciate if we
 13 could do that because there were doing two different
 14 universal funds, and the witness has already pointed
 15 it out once, and I don't want the testimony to be
 16 unclear.

17 MR. ACKELSBURG: That's fine. Why
 18 don't I just make it clear that I'm not talking at
 19 all about the Universal Fund No. 1, and that anytime
 20 I make reference in the next five minutes to the
 21 Universal Fund, I'm talking about the Universal Fund
 22 --. Okay?

23 MR. SHELTON: Okay. So for -- for the
 24 sake of the record, until counsel says otherwise, I
 25

1 you were still in partnership with First Bank of
 2 Delaware, First Bank of Delaware was still
 3 originating the loans --

4 A. Right.

5 Q. -- the participations started getting
 6 purchased by a Victory Park entity rather than a
 7 Universal entity?

8 A. I believe that's correct. What I thought
 9 you were suggesting was that they --

10 Q. Don't worry --

11 A. -- bought out the other one, which I didn't
 12 think was what had happened. I don't know the
 13 specifics. I do remember at some point in time that
 14 Victory Park became an investor in Universal Fund --
 15 again, my -- my understanding, and began through
 16 that relationship owning the participations in that
 17 entity.

18 Q. Okay. And then at -- so at some point
 19 soon thereafter, you get word from First Bank of
 20 Delaware that they're going to stop originating
 21 loans, right?

22 A. I -- I'm sorry, I don't know the specific
 23 timing of when all these happened. I can say that,
 24 yes, I know that Victory Park began buying
 25 participations before the -- we were notified of the

1 am going to assume all future references, and the
 2 witness should as well, to Universal Fund are to
 3 Universal Fund -- only and not to Universal Fund I.
 4 And I would ask if you ever go back on that and you
 5 want to talk about Universal Fund I, that you just
 6 announce that for the record. Thank you.

7 BY MR. ACKELSBURG:

8 Q. Do you remember, roughly, July of 2010 that
 9 Victory Park, essentially, bought out the Universal
 10 Fund? Do you remember that happening?

11 MR. SCHEFF: Object to the form.

12 MR. SHAPIRO: Object to form.

13 MR. SCHEFF: Object to the form.

14 A. Victory Park bought out. I remember at
 15 some point in time -- again, I'm -- I'm sorry, I
 16 don't know the exact timing -- Victory Park became
 17 an investor, and I don't know whether they came in
 18 in parallel, so pari passu to any of the previous
 19 investments, or that when their investment dollars
 20 came in, the previous investors were repaid in that
 21 transaction. So I don't know the specifics.

22 BY MR. ACKELSBURG:

23 Q. I'm not -- and I'm not asking you to recall
 24 the details of that transaction. But just at some
 25 point, while you were still lending to the -- while

1 termination of the program by the bank. I think
 2 that's what you're asking.

3 Q. Okay. Right. And so there would have --
 4 there would have had to have been discussions with
 5 Victory Park to let them know that -- of what the
 6 bank had told you, right?

7 A. Well, yes, we -- we notified them that the
 8 program was being terminated and the loans would be
 9 paying out over time.

10 Q. Okay. And, similarly, when you decided at
 11 Think -- at Think to pursue the tribal model, to try
 12 to find a partner that -- that suited your
 13 requirements, whatever they were -- and we
 14 haven't -- we haven't gotten there yet -- you would
 15 have been in discussions with Victory Park about
 16 that, right?

17 A. At some point in time, we would have
 18 discussed that we were evaluating it and given them
 19 some time to think of whether they were interested
 20 in evaluating that as a potential funding
 21 opportunity for them.

22 Q. And at some --

23 A. I just don't know exactly when that
 24 happened.

25 Q. Right. And without the specifics of the

1 day, at some point, Victory Park told you that they
 2 were interested, right?
 3 A. That's correct.
 4 Q. Okay. And so whoever kind of came up with
 5 the name, either it was Victory Park or Think
 6 Finance, or together, the concept came up of GPLS to
 7 be a -- essentially, a replacement investment fund
 8 for whatever the preexisting one was with regard to
 9 First Bank of Delaware?
 10 MR. SHAPIRO: Object.
 11 MR. SCHEFF: Object to the form.
 12 MR. SHAPIRO: Object to the form. And
 13 inconsistent with prior testimony, mischaracterizing
 14 the testimony.
 15 A. And, again, the way I remember it, and I
 16 remember it fairly discreet, there was the Universal
 17 Fund that Victory Park Capital was an investor in.
 18 At some point in time, the GPLS fund was established
 19 and Victory Park was an investor in that fund. I
 20 don't remember with any specificity how things
 21 evolved and if they did evolve. I'm sure Chris
 22 could do a better job than I could about that.
 23 BY MR. ACKELSBURG:
 24 Q. Okay. Now, the Great Plains Lending
 25 labelled product didn't -- didn't happen as you

1 thought it was going to happen when you said start
 2 the engines on February 28, 2011?
 3 MR. SCHEFF: Object to the form.
 4 You can answer the question.
 5 A. Yes.
 6 BY MR. ACKELSBURG:
 7 Q. Okay. Instead, there was a -- there was a
 8 switch to a different tribe, the Chippewa Cree in
 9 Montana, correct?
 10 A. Yes.
 11 Q. Okay. So what do you remember -- well,
 12 first of all, what went wrong with the
 13 Otoe-Missouria and Mark Curry, or whoever you were
 14 talking with back then, or whoever --
 15 A. Yeah.
 16 Q. -- the company was talking with?
 17 A. You know, the difference between the
 18 preliminary sort of deal terms that seemed to make
 19 sense and the final paperwork, we just weren't
 20 really happy with what we were seeing. At a high
 21 level, we thought that the -- we believed that the
 22 way that we worked with the bank, which we felt was
 23 very stable and a well-functioning structure, was
 24 such that we had really -- you know, we were the
 25 service provider for the bank, and there weren't

1 intermediaries in between. As we saw the final
 2 proposed documents coming from -- from the tribe,
 3 they had the sort of management company that the
 4 tribe was using --
 5 Q. MacFarlane Group?
 6 A. I don't know which entity it was. It
 7 was -- it was one that Mark Curry was associated
 8 with. I don't know if it was The MacFarlane Group
 9 or anyone else. But -- but there was a business
 10 entity that we were to be contracting with as
 11 opposed to directly with the tribal lending entity,
 12 and we didn't think that was a smart way to do
 13 business. And the --
 14 Q. Why not --
 15 MR. SCHEFF: Let him finish the
 16 answer, please.
 17 A. You know, we -- we felt we had a business
 18 model that, you know, A, it worked well. It had had
 19 FDIC -- in our minds at least, an FDIC sort of stamp
 20 of approval on it because it had gone through FDIC
 21 examination. We wanted to replicate that as much as
 22 possible. And having another entity where also we
 23 didn't feel like we'd be working directly with
 24 that -- that, you know, tribal lending entity, it
 25 just didn't feel like the right relation- -- I mean,

1 we already walked away from the Butch Webb operation
 2 because we didn't think that was an appropriate
 3 way -- you know, we didn't think there was -- they
 4 had any sovereign rights to lend at all.
 5 And this, we just thought, was not the
 6 kind of business relationship that would be a
 7 stable, longstanding one that we wanted to be part
 8 of. So we had been continuing to talk to other
 9 tribes.
 10 And as you mentioned, I think it was
 11 Haynes that bound the -- the -- what became the
 12 Plain Green tribe, the Chippewa Cree tribe, and we
 13 were sort of in parallel talking with those two --
 14 two tribes. And, ultimately, we were more
 15 comfortable with the structure and the relationship
 16 with the Chippewa Cree than we were with the
 17 Otoe-Missouria at that time.
 18 BY MR. ACKELSBURG:
 19 Q. Where did you get the impression that the
 20 FDIC had approved of the structure that you had in
 21 place with First Bank of Delaware?
 22 A. Well, it had gone through multiple FDIC
 23 exams.
 24 Q. How do you know?
 25 MR. SHELDON: I would just caution

<p style="text-align: right;">Page 185</p> <p>1 again if anything you're going to say would be as a</p> <p>2 result of being told something by counsel, you know,</p> <p>3 you can state that for the record, but if it's</p> <p>4 independent of that, please do testify.</p> <p>5 A. It was independent. It was from bank --</p> <p>6 bank management.</p> <p>7 BY MR. ACKELSBURG:</p> <p>8 Q. Like Alonzo?</p> <p>9 A. Alonzo and Harry Madonna, the chairmen.</p> <p>10 And they -- I'm sorry, I just lost my train of</p> <p>11 thought. Excuse me.</p> <p>12 Yeah, so back to the -- the sort of FDIC</p> <p>13 oversight. So you've probably seen that at one</p> <p>14 point in time the FDIC stopped the bank from some of</p> <p>15 its programs and thought that they exhibited</p> <p>16 rent-a-bin characteristics. Ours was excluded from</p> <p>17 that. And we did modify the structure of the</p> <p>18 relationship with the bank, sort of looking at -- at</p> <p>19 what the FDIC didn't like about the other</p> <p>20 transactions. That was actually largely what the</p> <p>21 bank asked us to do. And then -- and that's when we</p> <p>22 established the Universal Fund -- for instance.</p> <p>23 Yeah, Universal Fund --. And the FDIC did -- I</p> <p>24 think it was two more exams, at least one more exam</p> <p>25 since that time.</p>	<p style="text-align: right;">Page 187</p> <p>1 So I guess I'd be surprised if the FDIC</p> <p>2 was unaware of it because they used that same</p> <p>3 structure and the same -- some of the same</p> <p>4 investors, at least for the previous program as well</p> <p>5 as for ours, but I don't know for a fact whether the</p> <p>6 FDIC didn't know that.</p> <p>7 Q. Okay. You do know that the government</p> <p>8 ultimately shutdown First Bank of Delaware, you do</p> <p>9 know that, right?</p> <p>10 MR. SCHEFF: Object to the form; lack</p> <p>11 of foundation.</p> <p>12 A. I will go ahead and answer the question.</p> <p>13 They did shut it down, but, again, my</p> <p>14 understanding is --</p> <p>15 BY MR. ACKELSBURG:</p> <p>16 Q. They did or didn't?</p> <p>17 A. Oh, actually, did they shut it down? I</p> <p>18 thought the -- the bank actually sold all the</p> <p>19 assets.</p> <p>20 Q. After they were sued by the justice</p> <p>21 department?</p> <p>22 A. I don't know that that means they shut them</p> <p>23 down.</p> <p>24 MR. SCHEFF: Object to the form; lack</p> <p>25 of foundation.</p>
<p style="text-align: right;">Page 186</p> <p>1 So from our perspective, you know, the</p> <p>2 bank had been told this is how we think you ought to</p> <p>3 be working with service providers for credit</p> <p>4 programs. We made changes specifically based on</p> <p>5 bank guidance. And then the FDIC looked at it and</p> <p>6 continued that -- that business until the bank</p> <p>7 ultimately exited it.</p> <p>8 So, again, from our perspective, the FDIC</p> <p>9 had looked at it and thought there was an</p> <p>10 appropriate relationship for a lender and a service</p> <p>11 provider to have. So that was -- that was our</p> <p>12 perspective and why we wanted to heed as close to</p> <p>13 that structure as possible when working with tribes.</p> <p>14 Q. Based on your conversations with Alonzo</p> <p>15 Primus and Harry Madonna, did you have the</p> <p>16 impression that the FDIC had been informed by them</p> <p>17 that the invest- -- that the investors in the</p> <p>18 Universal Fund who was buying the participations</p> <p>19 were family and friends of the bank leadership?</p> <p>20 A. The FDIC, my understanding -- and this is</p> <p>21 really coming from representations from Alonzo and</p> <p>22 others at -- at the bank, was pretty thorough in its</p> <p>23 evaluation of these programs, both the program with</p> <p>24 us and previous programs that the -- that the bank</p> <p>25 had had.</p>	<p style="text-align: right;">Page 188</p> <p>1 A. Maybe -- maybe they -- I assumed that they</p> <p>2 were selling assets, there was some value to those</p> <p>3 assets as an -- as an entity.</p> <p>4 BY MR. ACKELSBURG:</p> <p>5 Q. By the way, the -- the loan assets with</p> <p>6 regard to the ThinkCash program, at the time the</p> <p>7 bank was selling off its assets, Think Finance</p> <p>8 already owned all those loan assets; am I right?</p> <p>9 MR. SCHEFF: Object to the form; lack</p> <p>10 of foundation.</p> <p>11 A. So when the -- at the end of the -- when</p> <p>12 the bank notified us that they wanted us -- they</p> <p>13 wanted to no longer continue the program, they told</p> <p>14 us they would stop originating by the end of the</p> <p>15 year, and they asked us to -- to buy those assets</p> <p>16 off of their books. And I don't know if --</p> <p>17 actually, I --</p> <p>18 BY MR. ACKELSBURG:</p> <p>19 Q. Well, there weren't any --</p> <p>20 A. I just don't know. There -- there was a --</p> <p>21 they -- you know, their -- and I'm not sure how much</p> <p>22 the bank retained. It was maybe 2 or 3 percent that</p> <p>23 they had on their books after they participated out</p> <p>24 the majority to the Universal Fund --. But at some</p> <p>25 point in time, as sort of the end of the program,</p>

<p style="text-align: right;">Page 189</p> <p>1 they wanted to get all of those assets off their</p> <p>2 books. And I don't know exactly where those ended</p> <p>3 up. I don't think that Think bought those assets.</p> <p>4 Maybe they did. But I thought they were ultimately</p> <p>5 contributed to -- to another fund.</p> <p>6 Q. The investment fund, right. But that</p> <p>7 investment fund, due to those quirky accounting</p> <p>8 rules back in the Universal -- Universal Fund</p> <p>9 period, those loan assets were on the books of Think</p> <p>10 Finance anyway, right?</p> <p>11 A. I thought you asked --</p> <p>12 MR. SCHEFF: Object to the form; lack</p> <p>13 of foundation.</p> <p>14 You can answer the question.</p> <p>15 A. I thought you asked who bought the -- the</p> <p>16 assets.</p> <p>17 BY MR. ACKELSBURG:</p> <p>18 Q. So it might --</p> <p>19 A. I believe the assets were bought by the</p> <p>20 investment fund, not by us.</p> <p>21 Q. And then by virtue of those pesky</p> <p>22 accounting rules, those -- they were actually shown</p> <p>23 on the financial statements of Think Finance as</p> <p>24 assets of the company?</p> <p>25 MR. SCHEFF: Object to the form.</p>	<p style="text-align: right;">Page 191</p> <p>1 don't know. Oftentimes we would do that.</p> <p>2 BY MR. ACKELSBURG:</p> <p>3 Q. And he was someone that you would -- you</p> <p>4 trusted and had -- you know, he was involved in the</p> <p>5 First Bank of Delaware product, right?</p> <p>6 MR. SCHEFF: Object to the form.</p> <p>7 A. I mean,, he was -- he was an attorney</p> <p>8 with -- with a reputable law firm and seemed to have</p> <p>9 a lot of experience in, you know, supporting credit</p> <p>10 programs.</p> <p>11 BY MR. ACKELSBURG:</p> <p>12 Q. Well, but he's someone you knew and trusted</p> <p>13 already, right?</p> <p>14 MR. SCHEFF: Object to the form.</p> <p>15 BY MR. ACKELSBURG:</p> <p>16 Q. As -- as --</p> <p>17 A. I mean,, so you're saying "trusted." I'm</p> <p>18 sorry, there's a lot of attorneys in the room here.</p> <p>19 He is an attorney. He is someone we worked with in</p> <p>20 the past. I'm not sure "trusted" is the word I</p> <p>21 would use for him, but he was a person who had</p> <p>22 experience with us and we knew him and had worked</p> <p>23 with him.</p> <p>24 Q. Specifically, with regard to the</p> <p>25 ThinkCash/First Bank of Delaware product, right?</p>
<p style="text-align: right;">Page 190</p> <p>1 A. I certainly wouldn't -- you know, I</p> <p>2 wouldn't characterize accounting rules as pesky. I</p> <p>3 just don't think they're an accurate way to judge</p> <p>4 the contractual relationships that the -- that Think</p> <p>5 had with the entities that it did business with.</p> <p>6 BY MR. ACKELSBURG:</p> <p>7 Q. Okay. Now, did -- did Think Finance when</p> <p>8 it began talking with the Chippewa Cree, did it do</p> <p>9 any due diligence on Steven Haynes, the go-between?</p> <p>10 MR. SCHEFF: Object to the form; lack</p> <p>11 of foundation.</p> <p>12 A. You know, I don't know the answer to that.</p> <p>13 Oftentimes we would do background checks on people</p> <p>14 we work with. That was sort of a common practice.</p> <p>15 I don't know if in that case we did. I know there</p> <p>16 was some -- I mean,, I expect there was some vetting</p> <p>17 of him by the people that worked with him and in how</p> <p>18 we came into contact, I think you said Rick Eckman,</p> <p>19 sort of was the person who was kind of the person</p> <p>20 that put us together.</p> <p>21 And I -- I just don't know exactly what --</p> <p>22 you know, how much background or due diligence was</p> <p>23 done on Haynes. I mean,, because it came from an</p> <p>24 attorney, there might have been a sense that he had</p> <p>25 already been vetted to a certain extent. But I</p>	<p style="text-align: right;">Page 192</p> <p>1 A. Yes.</p> <p>2 Q. Okay. And with regard to the Chippewa</p> <p>3 Cree, it's -- you know, the tribe itself, was there</p> <p>4 any due diligence done by Think with regard to the</p> <p>5 tribe?</p> <p>6 A. I'm sorry, which tribe are we talking</p> <p>7 about?</p> <p>8 Q. Chippewa Cree.</p> <p>9 A. The Chippewa Cree tribe.</p> <p>10 Q. The tribe that Haynes -- Eckman and Haynes</p> <p>11 connected you with.</p> <p>12 A. Yes, it's -- it's not easy to get a lot of</p> <p>13 detailed due diligence on -- on tribal</p> <p>14 organizations. You don't have all the sort of</p> <p>15 filings and stuff that you have with, you know, a</p> <p>16 nontribal company. But we did what we could.</p> <p>17 A lot of it actually came from Haynes.</p> <p>18 Haynes had worked with the Chippewa Cree before.</p> <p>19 And as far as various other tribal organizations he</p> <p>20 had worked with, he seemed to think they were a</p> <p>21 pretty sound business partner. There was certainly</p> <p>22 a real need on the reservation for business</p> <p>23 development, and he felt they'd be a good partner.</p> <p>24 But I think we probably -- it was hard for</p> <p>25 us to do a whole lot of additional due diligence on</p>

<p style="text-align: right;">Page 193</p> <p>1 the Chippewa Cree as a business partner outside of</p> <p>2 what Haynes represented to us.</p> <p>3 Q. And Haynes' business relationship with the</p> <p>4 tribe was in a casino business, right?</p> <p>5 A. I believe he was in a casino business with</p> <p>6 them. I don't know any more details than that. But</p> <p>7 he had worked with them and thought they were good</p> <p>8 business partners.</p> <p>9 Q. Did the company -- did Think Finance do any</p> <p>10 due diligence with regard to the Chippewa Cree's</p> <p>11 prior experience in the lending business?</p> <p>12 A. Well, I knew that they had a lending</p> <p>13 business in the past. It was one of the things that</p> <p>14 made them an attractive business partner because</p> <p>15 they had already had some experience with lending.</p> <p>16 I don't know anything other than the fact that they</p> <p>17 had a product that they -- that they told us that</p> <p>18 they were unhappy with.</p> <p>19 Q. Did you look at the product or look at its</p> <p>20 track record or . . .</p> <p>21 A. I didn't personally.</p> <p>22 Q. Did anybody at Think Finance do that?</p> <p>23 A. I can't speak to that.</p> <p>24 Q. So that's not something that you, as CEO,</p> <p>25 required? That wasn't information that you needed</p>	<p style="text-align: right;">Page 195</p> <p>1 a -- as far as we knew, that was a former business</p> <p>2 relationship. I think it had already ended by the</p> <p>3 time that we had begun discussions with the tribe.</p> <p>4 I'm not certain about that, but that was my</p> <p>5 recollection.</p> <p>6 Q. Hang on just for a second.</p> <p>7 Now, at some point you learned that --</p> <p>8 sorry. At some point Think Finance learned that</p> <p>9 Encore was, in fact, getting a percentage of the</p> <p>10 take from the Plain Green product, right?</p> <p>11 A. Yes.</p> <p>12 Q. Okay.</p> <p>13 A. It's very frustrating.</p> <p>14 Q. Explain. Why was it so frustrating?</p> <p>15 A. We didn't think they had done any value in</p> <p>16 terms of helping the tribe establish a relationship</p> <p>17 with us, yet they were taking what we felt was, you</p> <p>18 know, economic benefits from the tribe and putting</p> <p>19 them into their own pocket for no value add.</p> <p>20 Q. Well -- so make sure I understand this. So</p> <p>21 when you were talking -- let's switch tribes. When</p> <p>22 you were talking to the Otoe-Missouria, you knew</p> <p>23 that there was a nontribal, call it intermediary</p> <p>24 service provider, that -- that you were talking with</p> <p>25 about the possible relationship. You were talking</p>
<p style="text-align: right;">Page 194</p> <p>1 in order to make a decision whether this was a good</p> <p>2 partner?</p> <p>3 MR. SCHEFF: Object to the form.</p> <p>4 You can answer the question.</p> <p>5 A. I can say I didn't do that. And I can't</p> <p>6 remember now exactly what due diligence was done on</p> <p>7 that tribe. I can speak to the fact that as a team</p> <p>8 we got comfortable that they would be a good</p> <p>9 business partner, but I just can't speak to exactly</p> <p>10 what was done and how much detail was accomplished.</p> <p>11 BY MR. ACKELSBURG:</p> <p>12 Q. To the extent the Chippewa Cree had any</p> <p>13 prior experience in a lending operation, that would</p> <p>14 have been with the service provider being a company</p> <p>15 called Encore, Encore Services, right?</p> <p>16 A. I believe that's true; although, I don't</p> <p>17 know exactly what role Encore played in the previous</p> <p>18 lending business that the tribe had. I remember</p> <p>19 that name in association with the business but not</p> <p>20 what the role was.</p> <p>21 Q. Well, did the -- did Think Finance do any</p> <p>22 due diligence with regard to --</p> <p>23 A. To Encore?</p> <p>24 Q. -- to Encore?</p> <p>25 A. Not that I'm aware of. That -- that was</p>	<p style="text-align: right;">Page 196</p> <p>1 with Mark Curry about whether or not you could</p> <p>2 connect with the Otoe-Missouria, right?</p> <p>3 MR. SCHEFF: Object to the form;</p> <p>4 compound question.</p> <p>5 You can answer whatever question you</p> <p>6 choose.</p> <p>7 A. So, you know, the -- I didn't know all the</p> <p>8 details of how Curry worked with the Otoe, but Curry</p> <p>9 was the intermediary -- intermediary that sort of</p> <p>10 found us as a potential partner for the tribe. So</p> <p>11 they had added some value add there. And, also, we</p> <p>12 knew that they were providing some level of</p> <p>13 consulting to the tribal lending about how to think</p> <p>14 about their economic development on the reservation.</p> <p>15 Neither of those things is true of Encore.</p> <p>16 BY MR. ACKELSBURG:</p> <p>17 Q. Well -- okay. So --</p> <p>18 A. So we just saw no value in what they were</p> <p>19 doing. Whereas -- whereas, Mark Curry -- and we can</p> <p>20 argue about, you know, exactly how much they got.</p> <p>21 I'm not sure exactly I know what it was. But there</p> <p>22 was real value add they provided to the tribe, and</p> <p>23 they should have been compensated in some fashion</p> <p>24 for that.</p> <p>25 Q. But did you care whether or not the</p>

1 Chippewa Cree had any prior lending experience? Was
2 that important to you?

3 A. It was, actually. It gave us a sense that
4 they had already evaluated the product and were
5 comfortable with it and saw the value for -- for
6 their reservation.

7 Q. But to the extent they did, in fact, if
8 they really did have any prior lending experience,
9 it would have been with regard to some lending
10 activity associated with Encore Services, right?

11 A. Well, I don't think you get credit for a
12 failed business opportunity that gives you an
13 understanding of the fact that there is a business
14 opportunity. They added zero value in the
15 transaction for -- for us. They added zero value
16 for the tribe, and yet they're an economic drain on
17 important, you know, revenue sources to the tribe.
18 So, yeah, we had a lot of problem with it. It
19 seemed like a wildly inappropriate way to be, you
20 know, stripping wealth from the tribe is how we
21 viewed it. I know I may be overstating that, but we
22 felt that was inappropriate at the time and we still
23 do. Or I still do.

24 Q. Look, I have the same impression. I'm
25 not -- I'm not fighting that at all.

1 But that's something that you discovered
2 sort of late in the game after the Plain Green
3 product was up and running for a couple of years,
4 right?

5 A. I don't know when we discovered it. I
6 remember it happened after we had got the program up
7 and running.

8 Q. Okay. So at that point, you made the
9 determination that Encore had provided no value to
10 this transaction, what -- to this relationship, this
11 product at all?

12 MR. SCHEFF: Which product? Be
13 specific.

14 MR. ACKELSBURG: Plain Green. Plain
15 Green.

16 MR. SCHEFF: Thank you.

17 BY MR. ACKELSBURG:

18 Q. But I'm going back to the beginning, to
19 February, March 2011, you said it was important
20 that -- it was important to you, to the company,
21 that the Chippewa Cree had some prior lending
22 experience?

23 A. That was a plus for them as a business
24 partner, that's correct.

25 Q. And how did you determine that they had any

1 prior lending experience?

2 A. Through representations of Haynes.

3 Q. And that's it?

4 A. Yeah.

5 Q. Okay. By the way, the Encore crowd, we're
6 talking about -- basically, we're talking about Las
7 Vegas gangsters, aren't we?

8 MR. SCHEFF: Object to the form.

9 A. I know nothing about them other than the
10 fact that I thought their business relationship with
11 the tribe was -- I had heard it was unsuccessful
12 from a lending perspective, and I thought the fact
13 that they were getting any sort of revenue share was
14 inappropriate. I don't know anything about that --
15 that crowd of people.

16 BY MR. ACKELSBURG:

17 Q. Well, when we're talking about Encore,
18 we're talking about Zachary Roberts and -- and --

19 A. Don't know the name.

20 Q. What about Marty Mazzara, you know that
21 name, right?

22 A. I -- I don't remember that name.

23 Q. Do you remember being sent a video by Mark
24 Curry of Marty Mazzara's collection operation in Las
25 Vegas?

1 A. No, I don't.

2 MR. ACKELSBURG: Okay. What are we up
3 to? 278.

4 (Exhibit No. 278 marked.)

5 A. Thank you.

6 BY MR. ACKELSBURG:

7 Q. Does this -- does this refresh your
8 recollection?

9 A. Yeah, it does. And so I'm reading here, it
10 was in 2013, a couple years after the relationship
11 with the tribe had happened. And we were, by that
12 point in time, aware of the fact that Encore was
13 getting money as -- I guess it was a finder's fee or
14 consultant's fee or something like that. So, you
15 know, I -- I don't know the name that you mentioned.
16 I don't think that's on here. But there was -- I do
17 remember looking at some video, and I think it was a
18 party in their call center, and it just seemed
19 really --

20 Q. It was pretty offensive, wasn't it?

21 A. I don't know about offensive. I actually
22 don't remember what was in it. I just remember
23 thinking it was not a -- you know, obviously, it
24 wasn't an indication of a professionally run
25 business, from my perspective.

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<p>1 Q. By the way, did anyone in Think</p> <p>2 Finance ever -- or did you ever come to learn that</p> <p>3 this same guy, Marty Mazzara, who was also connected</p> <p>4 to Encore, had at this point in time purchased</p> <p>5 millions of dollars of ThinkCash and PayDay One</p> <p>6 debt?</p> <p>7 A. I didn't know that. How -- I guess I can</p> <p>8 ask, how would he have done that directly? I don't</p> <p>9 remember that we --</p> <p>10 Q. All right. Well, let's --</p> <p>11 A. Direct buying through us, I'm not aware of</p> <p>12 it.</p> <p>13 Q. Well, let's talk about -- so you do know --</p> <p>14 so at some point in, I think, it was 2010, you</p> <p>15 decided to start selling debt. You got a broker</p> <p>16 named Brett Horrocks involved, right?</p> <p>17 A. Yes.</p> <p>18 Q. And Brett Horrocks connected you with a</p> <p>19 company called NCA?</p> <p>20 A. Yes.</p> <p>21 Q. And NCA ended up buying, virtually, all the</p> <p>22 debt from PayDay One, from ThinkCash, from -- from</p> <p>23 the tribal products; am I right?</p> <p>24 A. I don't know how much they bought. They</p> <p>25 were a buyer. I thought there was a few debt</p>	<p>1 sort of make those changes, that you learned that</p> <p>2 the debt from ThinkCash, PayDay One, tribal, that,</p> <p>3 basically, it had gotten into hands that you hadn't</p> <p>4 vetted originally, right?</p> <p>5 A. Yeah, and I have no reason to believe that</p> <p>6 there was anything done that was in violation of the</p> <p>7 Fair Debt Collections Practices Act. I think all of</p> <p>8 the people that did buy the -- the paper were</p> <p>9 licensed collectors. But we wanted more control</p> <p>10 over the customers that -- that, you know, took</p> <p>11 products either from -- from our direct products or</p> <p>12 from customers that were using the -- the licensed</p> <p>13 products.</p> <p>14 Q. Right, but just going back to this -- to</p> <p>15 this e-mail in this -- before you -- before you did</p> <p>16 change the rules so that you took more control over</p> <p>17 NCA's ability to resell the debt, millions of</p> <p>18 dollars of PayDay One, ThinkCash and tribal loans</p> <p>19 ended up in hands that you had not vetted?</p> <p>20 MR. SCHEFF: Object to the form.</p> <p>21 BY MR. ACKELSBURG:</p> <p>22 Q. That's the -- that's why you changed the</p> <p>23 rules, right?</p> <p>24 MR. SCHEFF: Object to the form; lack</p> <p>25 of foundation.</p>
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<p>1 buyers. There were a limited number. For some</p> <p>2 reason, I remember NCA and NCB. I think they were</p> <p>3 different companies.</p> <p>4 Q. And do you remember that there were some</p> <p>5 issues about the fact that NCA was selling the debt</p> <p>6 to secondary purchasers?</p> <p>7 MR. DAUGHERTY: Objection to form.</p> <p>8 BY MR. ACKELSBURG:</p> <p>9 Q. You do remember that problem, right?</p> <p>10 A. It was --</p> <p>11 MR. DAUGHERTY: Same objection.</p> <p>12 A. It was -- I mean, it's -- it's a very</p> <p>13 common thing that happens in the -- in the business.</p> <p>14 Typically, when debt buyers buy debt, if they can't</p> <p>15 collect on it, they will resell it later. We were</p> <p>16 pretty new to selling debt and didn't understand</p> <p>17 that this could happen. It was in their legal right</p> <p>18 to do under the contract, so we did change the</p> <p>19 contract to prevent any future reselling because --</p> <p>20 BY MR. ACKELSBURG:</p> <p>21 Q. Right.</p> <p>22 A. -- we thought it was important to keep</p> <p>23 that -- you know, keep a close eye on any debt</p> <p>24 collection.</p> <p>25 Q. No, and I saw that. But before you did</p>	<p>1 You can answer the question.</p> <p>2 A. I mean, again, it's actually a pretty</p> <p>3 common thing. We were very unusual in not wanting</p> <p>4 that to happen. And also, as I said, I've got</p> <p>5 absolutely no reason to believe that there was</p> <p>6 anything inappropriate that was done with the paper</p> <p>7 because we would have -- oftentimes, you know, if</p> <p>8 there was any sort of collections problem, we would</p> <p>9 hear about it, and I don't remember hearing anything</p> <p>10 in particular with this.</p> <p>11 But, certainly, you know, I didn't view</p> <p>12 this as a particularly professionally run company,</p> <p>13 and I wouldn't have wanted them to have any</p> <p>14 collections rights to any -- any loans that were</p> <p>15 originated using our platform.</p> <p>16 BY MR. ACKELSBURG:</p> <p>17 Q. And so you didn't know until today that</p> <p>18 millions of dollars of loans originated off your</p> <p>19 platform were, in fact, sold to this character that</p> <p>20 you thought -- that you thought should go to jail</p> <p>21 based on what you saw on the -- on the video?</p> <p>22 MR. SCHEFF: Objection; lack of</p> <p>23 foundation, mischaracterizes the exhibits.</p> <p>24 You can answer the question.</p> <p>25 A. So, obviously, the comment, "Some people</p>

1 should go to jail," is flip and doesn't really have
2 anything to do with any specific understanding of
3 what they're doing. And in this, I think I'm more
4 talking about still frustrated about the -- the
5 relationship they had with -- with the Rocky Boy
6 tribe, which we felt was -- you know, again, I still
7 believe that it was -- it was taking important
8 economic resources away from the tribe.

9 But, you know, yes, when we realized
10 that -- that the controls we thought were in place
11 by contractual arrangements weren't in place, we
12 acted to tighten those up so we could control it
13 more.

14 BY MR. ACKELSBURG:

15 Q. All right. So I'd like --

16 A. And -- I'm sorry -- to answer your
17 question, I wasn't aware until today that -- that
18 this specific entity had -- had ever purchased any
19 loans from us, at least I'm not aware that -- I
20 can't remember that I was aware of that.

21 Q. Okay. So just were you --

22 A. I'm sorry, is this a break time?

23 MR. SCHEFF: You need a break? You
24 got it.

25 THE VIDEOGRAPHER: We are off the

1 A. I'm just asking if it was executed as -- as
2 here, or was this just a draft term sheet that was
3 used by the sides in discussions?

4 Q. Well -- so Think Finance went to the tribe
5 with proposed terms, right? I mean,, that's what --
6 that's what you-all vetted before the crew went out
7 to Montana, right?

8 MR. SCHEFF: Object to the form; lack
9 of foundation through this witness.

10 You can answer the question if you can.

11 A. Generally, there would be a, you know,
12 business objective. I -- and I don't know when,
13 this was multiple meetings in and there had been a
14 lot of discussions or was -- was very early on and
15 it was just in a sort of here's optimally some of
16 the things we're looking to achieve versus the more
17 specific. So I -- if this was -- if this was
18 executed, it would help me better understand the
19 context for it. I don't need to see the executed
20 one. I'm just asking if it was executed.

21 BY MR. ACKELSBURG:

22 Q. My understanding it was, signed by Jason
23 Harvison --

24 MR. SCHEFF: Why don't you show him
25 the executed copy? It will give context on --

1 record. The time is 2:23 p m.

2 (Break taken, 2:23 p m. to 2:33 p m.)

3 THE VIDEOGRAPHER: We are back on the
4 record. The time is 2:33 p m.

5 BY MR. ACKELSBURG:

6 Q. Mr. Rees, were you involved in any of the
7 initial meetings with the Chippewa Cree?

8 A. The Chippewa Cree, no, I don't think so.

9 Q. Okay. But you would have vetted the term
10 sheet, though, before it was presented, right?

11 MR. SCHEFF: Object to the form.

12 You can answer.

13 A. I -- I don't know what I saw before it went
14 out. Certainly, the deal -- the proposed deal terms
15 I would have understood from Chris and Jason and
16 Michelle before they met with the tribe.

17 BY MR. ACKELSBURG:

18 Q. Okay. So I want to show you a document
19 that's been marked Plaintiff's Exhibit 127.

20 A. Thank you.

21 (Reviews document.)

22 By the way, do we -- it doesn't look like
23 this was executed. Do we know if it was?

24 Q. Would you rather see the executed one? I
25 mean, this is the one that was produced by --

1 BY MR. ACKELSBURG:

2 Q. -- John Hull.

3 MR. SCHEFF: Give him the executed
4 one.

5 MR. ACKELSBURG: We'll call this --
6 we'll call this P-279.

7 (Exhibit No. 279 marked.)

8 A. Thanks. Because I don't remember seeing
9 this specific document. Thank you.

10 Signed by Jason. Do we happen to know who
11 this -- curious as whose signature for GPLS was.

12 BY MR. ACKELSBURG:

13 Q. I haven't the faintest idea.

14 A. Okay. All right. Thank you.

15 (Reviews document.)

16 Great. Thank you.

17 Q. So you remember this document as setting
18 forth the terms that Think Finance presented to the
19 Chippewa Cree?

20 A. Like I said, I don't remember this term
21 sheet.

22 Q. I see. But you do remember -- the content
23 of the term sheet you remember, though, right?

24 A. Some of it. I mean,, there's even mention
25 of a law firm -- I don't know Jones and Keller.

1 Maybe I -- maybe I've heard the name. I don't
2 remember them.

3 Q. Well, why don't we work through it and
4 see --

5 A. Sure.

6 Q. Why don't we work through it. So in terms
7 of the transaction, the first paragraph is pretty --
8 well, it's just obvious that's what Think Finance
9 does, right, in terms of licensing the --

10 A. Licensing, yeah, they -- the basic
11 structure of the relationship where we're licensing
12 our software and, you know, providing certain other
13 services. Let's see. Coterminous, that seems like
14 something, generally speaking, we'd -- we'd do in a
15 term sheet.

16 Q. Okay. And the second paragraph in terms of
17 requiring the tribe to adopt a finance code, that
18 was something that Think wanted the tribe to do,
19 right?

20 MR. SCHEFF: Object to the form.

21 A. I actually don't know who drove that,
22 whether it was Haynes or GPLS or Think. It does
23 make sense that the parties would review the tribal
24 law under which the lending operation was operating
25 and be comfortable that it was acceptable to all

1 parties, but I don't know who brought that term into
2 play.

3 BY MR. ACKELSBURG:

4 Q. Okay. And the third paragraph, I mean,
5 it's, basically, a description of the ThinkCash
6 product that was previously on line in -- in
7 partnership with First Bank of Delaware, right?

8 MR. SCHEFF: Object to the form.

9 A. Actually, I mean,, both products were
10 installment loan. I don't know if the terms maximum
11 amount and -- and APRs are identical or just
12 comparable.

13 BY MR. ACKELSBURG:

14 Q. But in any case, these were the terms that
15 Think Finance was comfortable with?

16 A. And, I mean, certainly, we must have been
17 comfortable because we were willing to sign the term
18 sheet. I don't know how much negotiation on exactly
19 what the structure -- whether it happened before the
20 term sheet was -- was agreed to.

21 Q. Well, I mean,, these terms weren't set by
22 the tribe, right?

23 MR. SCHEFF: Object to the form.

24 A. I'm sure that there was discussions. I
25 mean,, the tribe had a lending program before. You

1 know, I'm sure that we would have said that we
2 wouldn't want to do a payday loan product, which I
3 think the tribe had done before. But to exactly
4 whether they -- you know, we proposed exactly what
5 that product looked like and they said: Yes, that's
6 exactly what we want, or whether there was some
7 discussion. Certainly, the tribes wanted different
8 things than -- than we had exactly proposed.

9 BY MR. ACKELSBURG:

10 Q. The fact that -- the provision about
11 Haynes, you don't know where that came from, the
12 last paragraph?

13 A. "Haynes will arrange to provide funding,"
14 yeah, I don't know who -- who drove that. As -- as
15 I mentioned before, I was aware that Haynes was
16 providing some sort of funding. Actually, more
17 recently I became aware of that. But I don't know
18 who came up with terms around Haynes, whether it was
19 Haynes, the tribe or us.

20 Q. Well, I believe that you also said earlier
21 that you were aware that Think Finance was providing
22 the money to Haynes to provide to the tribe?

23 MR. SCHEFF: Object to the form.

24 BY MR. ACKELSBURG:

25 Q. You do remember that, right?

1 MR. SCHEFF: Misstates the testimony.
2 You can answer the question.

3 BY MR. ACKELSBURG:

4 Q. At some point, you learned that that was --

5 A. At some point --

6 MR. SCHEFF: Object to the form.

7 A. -- I learned that we were providing debt to
8 Haynes, and I was also aware that Haynes was
9 providing debt to the tribes. I wasn't -- I didn't
10 know any sort of more of the details around that.

11 BY MR. ACKELSBURG:

12 Q. You didn't realize they were connected to
13 two things?

14 A. I -- I think the original question was more
15 specific than that and -- but I was aware that they
16 were connected, but I don't remember exactly how
17 they were connected and whether there was a complete
18 overlap or -- or something very different. I just
19 don't know exactly what his relationship with the
20 tribe was other than that he provided some form of
21 debt financing for the tribe. And I don't know
22 exactly what our relationship with Haynes was other
23 than we provided some form of debt to him, largely
24 because we had never, you know, done transactions
25 with tribes. And so providing -- you know,

<p style="text-align: right;">Page 213</p> <p>1 providing a debt to a tribe was something that we 2 didn't really understand much about. 3 Q. All right. And then there's references to 4 a variety of issues on the second page. 5 A. I mean, it looks like that GPLS may, from 6 time to time, purchase participations that sounds 7 very comparable to the structure that -- that was 8 used with the First Bank of Delaware. 9 Q. And you see that in terms of the mechanics, 10 that Haynes had to set up a fund with sufficient 11 monies to fund a day's worth of loans? Do you see 12 that? 13 A. I see it. This is new to me, but I see it. 14 Q. So this -- it sounds like before -- before 15 Jason signed this, he didn't -- he didn't talk to 16 you. Was he just off on his own? 17 MR. SCHEFF: Object to the form. 18 You can answer the question. 19 A. Well, we're talking about a lot of details 20 here, and these would be details that I would expect 21 the relationship manager and the person working on 22 the products to figure out between all the parties. 23 There were a lot of parties. 24 The tribe, we had -- it looks like -- it 25 looks like we had at least two sets of counsel</p>	<p style="text-align: right;">Page 215</p> <p>1 the bank as well. So the basic structure would have 2 been in place. I don't -- I don't remember sort of 3 stamping 4.5 as either the goal or the limit. It 4 was -- that would have been the range of things that 5 he was trying to achieve. 6 BY MR. ACKELSBURG: 7 Q. Is the "he" Jason? 8 A. Yeah, Jason. It would have been, you know, 9 the deal team, I recall, being Jason and Michelle. 10 Probably Sarah would have been involved. I don't -- 11 I don't know. But, you know, these are people I 12 worked with for quite a while, so I had a lot of 13 trust in his ability to negotiate the best job they 14 could. 15 Q. Am I right that the -- 16 A. And, again, this is -- this is just the 17 term sheet, not the final executed contract. 18 Q. Am I right that the higher the revenue 19 share, the less money at the end of the day for 20 Think Finance? Right? 21 MR. SCHEFF: Object to the form. 22 A. Higher the revenue share? That is true. 23 BY MR. ACKELSBURG: 24 Q. Okay. And this revenue share of 4.5 25 percent, this was significantly less than the</p>
<p style="text-align: right;">Page 214</p> <p>1 involved, obviously, GPLS or -- or Victory Park 2 Capital, and, you know, I -- you know, there was 3 certainly aspects that I would have expected that we 4 would have driven, other aspects that we wouldn't 5 necessarily have, like, you know, the -- the 6 structure of these mechanics. I don't know whether 7 that came from us. It seems like it's something 8 more salient to a relationship between the Haynes 9 and the tribe than -- than us. 10 BY MR. ACKELSBURG: 11 Q. What about the provision about revenue 12 share? Do you see that, about the tribe getting a 13 4.5 percent revenue share, that's something that 14 probably would have been driven by Think Finance 15 rather than GPLS, right? 16 MR. SCHEFF: Objection; calls for 17 speculation. You can answer the question if you 18 can. 19 A. You know, going into the negotiation, you 20 know, there was -- you know, how does -- you know, 21 he had a fair amount of leverage in negotiating the 22 deal as -- as the best he could. I mean, every 23 negotiation has its own unique challenges. I knew 24 that there was going to be a revenue share. 25 Obviously, that's the way it had worked with -- with</p>	<p style="text-align: right;">Page 216</p> <p>1 revenue share that Think was paying First Bank of 2 Delaware; am I right? 3 A. I don't remember what that -- what that 4 was. From what I remember, the bank seemed -- 5 excuse me -- the tribe seemed to think this was a 6 significantly better deal for them than they had 7 gotten from Encore, but I -- I can't speak to the 8 specifics of that deal either. 9 Q. And how do you remember that? 10 A. This was really as we learned that they had 11 an unsuccessful lending product, they told us they 12 were unhappy with the deal structure that had been 13 done at the time. I -- I can't remember exactly 14 what they didn't like about it, but they certainly 15 felt that this was very -- and as, obviously, 16 approved to be, a great boom to the, you know, 17 economic development on the tribe and a lot of 18 income that came to the tribe from this product. 19 Q. Now, in addition to the 4.5 percent offered 20 to the tribe, there was an additional 1 percent 21 offered to Haynes, right? 22 A. That's what it says here, yes. 23 Q. Well, do you remember that as part of the 24 Plain Green deal? 25 A. I don't.</p>

<p style="text-align: right;">Page 217</p> <p>1 Q. Okay.</p> <p>2 A. And by the way, I don't know what became --</p> <p>3 what got into the final executed contracts. This is</p> <p>4 a term sheet. So you may be showing me the executed</p> <p>5 contract at some point, but this is a term sheet</p> <p>6 rather than an -- than an executed agreement.</p> <p>7 Q. So if we wanted to know the terms of the</p> <p>8 final deal, am I correct that we would -- first, we</p> <p>9 would look at the contracts between Plain Green on</p> <p>10 the one hand and TailWind and TC Decision Sciences</p> <p>11 on the other with regard to the service provider</p> <p>12 relationship? Correct?</p> <p>13 A. So are you asking what the contracts are --</p> <p>14 Q. Yes.</p> <p>15 A. -- related --</p> <p>16 Q. Well, you --</p> <p>17 A. So we -- as we've said, Think was a</p> <p>18 marketing and technology provider, so we had --</p> <p>19 there may have been different naming structures, so</p> <p>20 I apologize if it isn't quite the same. But I do</p> <p>21 remember there was a marketing agreement by which we</p> <p>22 would be compensated for -- I believe it was new</p> <p>23 customers; although, it might have been loans</p> <p>24 overall. And then there was a technology licensing</p> <p>25 and servicing agreement, and we got some sort of</p>	<p style="text-align: right;">Page 219</p> <p>1 you if you want, but let's --</p> <p>2 A. Because it's -- it's a -- this -- GPLS</p> <p>3 shall pay a fee to Haynes, that doesn't seem like</p> <p>4 something that we would be a party to.</p> <p>5 Q. Oh, right. But you would -- you would</p> <p>6 have -- you would have the contract?</p> <p>7 A. I don't know that I would have.</p> <p>8 Q. Oh, I see. Okay.</p> <p>9 A. I mean, it doesn't mean I didn't, but I --</p> <p>10 I don't see why there would be any reason for me to</p> <p>11 have it.</p> <p>12 Q. Okay. Now, that -- the service provider</p> <p>13 contracts, the one regarding marketing and the</p> <p>14 one regarding Decision Sciences, they -- those</p> <p>15 contracts said that the tribes would be paying</p> <p>16 various fees to Think Finance for the services</p> <p>17 provided, right?</p> <p>18 A. Right.</p> <p>19 Q. But, in fact, those fees were all paid by</p> <p>20 GPLS, right?</p> <p>21 MR. SCHEFF: Object to the form; lack</p> <p>22 of foundation.</p> <p>23 A. Well, only for those -- I believe only for</p> <p>24 those loans that the -- that GPLS elected to buy</p> <p>25 participations in.</p>
<p style="text-align: right;">Page 218</p> <p>1 a -- of a share for that. Other contracts, there</p> <p>2 was the contract for buying the participations. I</p> <p>3 think that was called the participation agreement.</p> <p>4 And then there was a guarantee agreement that we</p> <p>5 talked about. And all of those things have</p> <p>6 evolved --</p> <p>7 Q. The administrative agency agreement?</p> <p>8 A. I think that's right as well. As I said,</p> <p>9 these things evolved a number of different times,</p> <p>10 and I don't remember the naming exactly. But those</p> <p>11 are, basically, the structure. And comparable to</p> <p>12 the structures, as I said, that we had with First</p> <p>13 Bank of Delaware.</p> <p>14 Q. Now, those --</p> <p>15 A. But, for instance, you mentioned that --</p> <p>16 you know, this Haynes agreement, I don't know if the</p> <p>17 Haynes agreement, you know, ended up being like</p> <p>18 that, and that wouldn't have been anything that --</p> <p>19 gosh, other than in the term sheet, I don't know why</p> <p>20 we -- I don't know that I would have seen the final</p> <p>21 executed agreement for that. I'm not sure that</p> <p>22 anyone at Think would have seen the executed</p> <p>23 agreement.</p> <p>24 Q. You're talking about the referral agreement</p> <p>25 where it -- I mean, we can -- we can show that to</p>	<p style="text-align: right;">Page 220</p> <p>1 BY MR. ACKELSBURG:</p> <p>2 Q. Meaning all of them?</p> <p>3 MR. SCHEFF: Object to the form; lack</p> <p>4 of foundation.</p> <p>5 A. Well, as I said there was the -- the --</p> <p>6 GPLS could always decide whether to buy the</p> <p>7 participations. They had a right but not a</p> <p>8 requirement to buy participations in the loans that</p> <p>9 were originated by the tribe. It was probably three</p> <p>10 independent parties with different -- or rights and</p> <p>11 responsibilities.</p> <p>12 BY MR. ACKELSBURG:</p> <p>13 Q. All right. Well, so just for those loans</p> <p>14 that GPLS did, in fact, buy 99 percent</p> <p>15 participations in, that the --</p> <p>16 MR. ACKELSBURG: Yes?</p> <p>17 MR. SHAPIRO: No, I'm sorry, I</p> <p>18 interrupted you. Go ahead.</p> <p>19 BY MR. ACKELSBURG:</p> <p>20 Q. So with regard to the loans that, in fact,</p> <p>21 GPLS purchased a 99 percent interest from Plain</p> <p>22 Green --</p> <p>23 A. Yes.</p> <p>24 Q. -- am I right that the marketing fees to</p> <p>25 TailWind and the technology fees to TC Decision</p>

1 Sciences, that in reality, those fees were paid by
 2 GPLS out of the collection revenue?
 3 MR. SHAPIRO: Object to form.
 4 MR. SCHEFF: Object to the form.
 5 BY MR. ACKELSBURG:
 6 Q. You understand how that's how the program
 7 worked, right?
 8 MR. SHAPIRO: Same objection.
 9 MR. SCHEFF: Object to the form.
 10 A. So my understanding is they either paid
 11 99 percent of that or a hundred percent. I don't
 12 know.
 13 BY MR. ACKELSBURG:
 14 Q. Okay. Whether --
 15 A. But they certainly paid a majority of those
 16 fees as part of the participation agreement.
 17 Q. Right. And do you know why it was
 18 structured such that the contracts were with the
 19 tribes for those fees, but, in fact, the fees in
 20 reality were paid by GPLS?
 21 MR. SHAPIRO: Object to form.
 22 MR. SCHEFF: Objection; misstates the
 23 evidence.
 24 MR. SHAPIRO: Go ahead.
 25 MR. SCHEFF: You can answer the

1 question if you can.
 2 A. Why was the deal structured the way it was?
 3 I mean,, this is sort what we had been first -- you
 4 know, the -- the bank had, you know, urged us to
 5 structure the relationship between them and us and
 6 the third-party, this Universal Fund -- that they
 7 had, you know, urged the establishment of. It was a
 8 structure that -- that we had been comfortable with.
 9 I imagine the GPLS had been comfortable with it.
 10 And so we adopted it as -- as we had done with the
 11 bank.
 12 BY MR. ACKELSBURG:
 13 Q. And turning to page 3, so why would Think
 14 or GPLS be making it a requirement of the deal that
 15 the tribe establish a company called Plain Green,
 16 LLC?
 17 MR. SCHEFF: Object to the form. The
 18 witness has testified this is a term sheet, not the
 19 final deal. If you want to talk to him about the
 20 final deal, show him those documents as opposed to
 21 the term sheet. It's just inappropriate.
 22 BY MR. ACKELSBURG:
 23 Q. You can answer the question now that
 24 Mr. Scheff has finished his speech.
 25 MR. SCHEFF: Mr. Scheff is trying to

1 make sure the witness is not misled.
 2 But go ahead, answer the question.
 3 A. Well, I -- I mean,, in order to begin the
 4 loan program, it has to be a bank account
 5 established. Generally, sort of best practices are
 6 that the bank account that's used for originating
 7 loans has the same name as the entity. One of the
 8 reasons for that is when a customer sees either
 9 funds into their account or a payment out of their
 10 account, they see that name on the -- on the bank
 11 account so it isn't confusing.
 12 So it starts out saying, you know,
 13 establish Plain Green or an entity with other --
 14 some other agreed upon name, and I think what
 15 they're just trying to say is you should make sure
 16 that the bank account has the same name as the
 17 lending entity name so there's no confusion to
 18 customers.
 19 BY MR. ACKELSBURG:
 20 Q. Well, actually, I was really more focused
 21 on the name Plain Green because, I'm assuming and
 22 maybe I'm wrong, so correct me if I am wrong, that
 23 your marketing team had come up with the name Plain
 24 Green before the first meeting with the Chippewa
 25 Cree. Am I right?

1 A. I just don't know the answer to that. I
 2 know that we had -- as I mentioned, there was a lot
 3 of product names being thrown around and evaluated
 4 by our team. Whether that -- that final name came
 5 into being before or after the initial discussions
 6 with the Chippewa Cree, I mean,, the fact that this
 7 is a term sheet suggested there had been previous
 8 meetings with the Chippewa Cree. It would have been
 9 pretty surprising if we would have started the first
 10 meeting with a term sheet.
 11 So it is true, I do remember that -- that
 12 Think did come up with that name along with -- I'd
 13 be surprised if we didn't have a dozen other names
 14 that we had come up, including crazy names, and they
 15 were all things that we sort of had in a parking lot
 16 for future products, whether products we directly
 17 originated or products that we would do with a
 18 third-party bank or a tribal lender. So I just
 19 don't know timing.
 20 But if the question is did -- did Think
 21 Finance come up with the name Plain Green, the
 22 answer is, yes, along with a number of other product
 23 names.
 24 Q. Okay. And my -- do you know what the
 25 reason was for telling the tribe that they had to

1 hire Pepper Hamilton?
2 MR. SCHEFF: Object to the form;
3 misstates the document.
4 You can answer the question if you can.
5 BY MR. ACKELSBURG:
6 Q. Page 3.
7 A. Well, it's unclear to me that this is a
8 Think, you know, specified document. I -- I guess
9 it's -- since -- since Pepper is representing the
10 tribe, I don't know that we, you know, urged them to
11 do it or they were somebody -- I mean, it's, I think
12 as you pointed out, Haynes and the Pepper Hamilton
13 firm had a relationship. So perhaps Pepper Hamilton
14 was recommended to the tribe by Haynes or maybe they
15 had -- I just don't know where that relationship --
16 MR. SCHEFF: Don't guess. If you know
17 the answer, fine.
18 A. Sorry about that. I just don't know in
19 this case. And this is -- again, just a point I
20 would make is, this is a term sheet that seems to
21 have come after a number of conversations already,
22 and it seems to be attempting to represent the
23 intents of all parties, not just one party.
24 MR. ACKELSBURG: Okay. I am going to
25 show you another document. I show you a document --

1 I show you a document marked Exhibit P-280.
2 (Exhibit No. 280 marked.)
3 BY MR. ACKELSBURG:
4 Q. This is an e-mail starting at TF-PA 606626.
5 It looks like you remember this e-mail.
6 A. I --
7 MR. SHELTON: May counsel have a few
8 minutes to read it, please?
9 MR. ACKELSBURG: Oh, sure.
10 MR. SHELTON: Thank you. It will just
11 take a second.
12 A. (Reviews document.)
13 Okay. Thank you.
14 MR. SHELTON: Just one more second for
15 me, please.
16 THE WITNESS: By the way, this is from
17 Sarah.
18 MR. SCHEFF: It's -- Think has
19 produced it.
20 THE WITNESS: It's not privileged?
21 MR. SCHEFF: It's Think's decision as
22 to whether or not it's privileged or not privileged.
23 THE WITNESS: Oh, okay.
24 MR. SCHEFF: They have options if they
25 believe it is privileged or not.

1 THE WITNESS: Okay.
2 BY MR. ACKELSBURG:
3 Q. And I'm not -- I'm not going to ask any
4 questions about Sarah's comments here. This is
5 really about the dialogue between you and Mark
6 Curry.
7 MR. SHELTON: You can proceed. Thank
8 you for your time.
9 BY MR. ACKELSBURG:
10 Q. So why don't you explain the context of
11 this exchange with Mark Curry.
12 A. Sure. This is at -- loosely speaking, in
13 that period of time where the -- what's called
14 Operation Choke Point is happening, a period of time
15 that, you know, obviously, we and certain others in
16 the industry, as well as legislators, thought it was
17 a period of regulatory overreach by banking
18 regulators to stop banks from doing business with
19 certain types of businesses.
20 And during that time, it became very hard
21 for us as a direct lender as well as -- as well as
22 tribal entities, such as in this case Great Plains
23 Lending, to -- to have stable ACH relationships,
24 which are, obviously, important for -- for the
25 business to operate.

1 And I -- I remember that we had been
2 doing -- you know, looking on behalf of the bank --
3 excuse me -- behalf of the tribe to help find them
4 other ACH providers. And, actually, there's a
5 number of -- I don't remember the details, but I --
6 I'm trying to -- a KapCharge guy. So I can't
7 remember what KapCharge is other than I'm pretty
8 sure they're an ACH provider. So I think that is
9 what this is all about.
10 We had an ACH provider for Great Plains
11 loan because the tribe had two service providers to
12 them for their two different lending programs. Mark
13 Curry who was involved with the other one said, "Can
14 you give us an introduction?" And we were nervous
15 about making that introduction.
16 We understood Mark and the chairman's
17 perspective on it, but we were sort of trying to get
18 through a situation where we could support, first
19 and foremost, the ongoing operation of the Great
20 Plains loan portfolio and their access to an ACH
21 account, and then, secondarily, any additional
22 business opportunities that the -- that the tribe
23 had.
24 Q. Specifically, I want to call your attention
25 to the -- to the sort of question and response here

1 that -- where -- where Mark Curry is -- his concern
2 is that Think might be exiting the tribal -- the
3 tribal model altogether. Do you see that?

4 A. Yes.

5 Q. Okay. And your response to him is,
6 "Hopefully you know we're not pulling away from the
7 tribal model. We're paying over a million dollars a
8 month in support of it." Right?

9 A. That's what it says.

10 Q. Okay. So what did you mean by that, that
11 Think Finance is paying a million dollars a month to
12 support the tribal model?

13 A. I actually don't know. I don't know
14 what -- what payments that's referring to. You may
15 know specifically, but my -- you know, there was --
16 it could have been any number of things. I don't
17 know whether it was legal activities or PR
18 activities or -- or ongoing support of the trade
19 associations or what. You know, overall, we were
20 actively committed to supporting the -- the
21 robustness of that business line.

22 MR. ACKELSBURG: I'll show you another
23 document marked P-281.

24 (Exhibit No. 281 marked.)

25 BY MR. ACKELSBURG:

1 certain -- there was a certain level of expenses
2 that were -- that you had to approve or that you
3 were as CEO monitoring?

4 A. Yes, as CEO, I would see roll-ups of -- of
5 expenses in the monthly financials.

6 Q. Okay. And so -- and this selected expense
7 detail, I mean,, what we're looking at here is the
8 detail that you looked at before in your capacity as
9 CEO, right?

10 A. Yes.

11 Q. Okay. So -- and the way it's broken down
12 is these are basically different vendor -- vendor
13 payments broken down into categories, right?

14 A. Yeah.

15 Q. Okay. And there's a category for legal,
16 right, that adds up to close -- close to \$7 million
17 for -- and we're looking at -- we're looking at,
18 basically, a 12-month period from December of 2012
19 to November 2013, right? Do you see that?

20 A. Yes.

21 Q. Okay. And it identifies \$6.9 million in
22 payments to law firms or -- mostly this is -- in
23 some cases, it's to -- like, Levick is -- well, how
24 would you describe Levick? A PR firm or --

25 A. I think of them more as a PR firm, but it's

1 Q. Now, I think that it's possible we haven't
2 seen one of these before, documents like this in the
3 production. But some of the documents -- you see
4 this is an e-mail with a document attached to the
5 e-mail. And then some of the documents attached to
6 e-mail are actually Excel sheets. And so what we've
7 been doing as a convention is -- in these
8 depositions is showing the witness first the -- what
9 we're calling the cover sheet produced in native
10 format and then -- and then a copy -- a printout of
11 the actual Excel sheet that is that native document.
12 Okay? Do you understand what we've done here?

13 A. Yes, I do.

14 Q. Okay. So we're looking here at something
15 called a "Selected Expense Report for Ken," right?

16 A. If I -- what I --

17 Q. You would like to explain what this is
18 or --

19 A. Well, I don't -- I mean,, it -- just the
20 "Selected Expense Report for Ken," it's, obviously,
21 not my expenses.

22 Q. Oh, no, I understand.

23 A. I must have requested this from -- from
24 someone in accounting.

25 Q. Well, and there were -- there were

1 put under legal for one reason or another.

2 Q. Okay. Well, maybe because they were
3 involved in the lobbying stuff?

4 A. I can't speak to why they were
5 characterized that way. I think of them as a PR
6 firm.

7 Q. But that's -- but that's Levick's work was,
8 was in sort of in the -- in the lobbying realm?

9 A. As I said, I thought of them more as the
10 PR. I think they had a lobbying practice, but I
11 don't think we hired them as a lobbyist. In fact,
12 I'm pretty sure they -- we didn't use them as a
13 registered lobbyist.

14 Q. So there -- so Patton Boggs is one of the
15 law firms that was providing services with regard to
16 the tribal model, right?

17 A. Uh-huh (affirmative response).

18 Q. Correct?

19 A. Yes. Yes. Thank you.

20 Q. Okay. And then there's a payment to NAFSA,
21 the Native American Financial Services Association,
22 of 800,000 during that year. That was --

23 A. Yes.

24 Q. -- one of -- and by the way, just going
25 back to the e-mail, we're basically looking here,

1 just to bolster what you were saying to -- to Mark,
2 I mean,, that this -- basically, what we're looking
3 at here is a representation of at least some of the
4 ways that Think Finance was supporting the tribal
5 model, this real dollars, right?

6 MR. SCHEFF: Object to the form.

7 A. Yes, we were both contributing to the trade
8 organization, Native American Financial Services
9 organization. There was legal expenses involved
10 with doing business with the three tribal lending
11 organizations as well as, you know, obviously, quite
12 a -- quite a variety of consulting and contracting
13 costs associated with bringing these products to
14 life.

15 Some of these I don't know, but -- but
16 generally speaking, yes, there's a lot of operating
17 expense involved in the -- the -- and I don't know
18 whether these are exclusive to -- to the tribal
19 lending programs. It's not clear that they are. So
20 I don't know how much is -- is, generally speaking,
21 legal consulting and contracting for the company as
22 a whole and how much was just for the tribal
23 association -- or sorry -- tribal-related -- related
24 business. But, you know, obviously, there was
25 meaningful amounts of legal and consulting and

1 contractor expense for the company as a whole.

2 BY MR. ACKELSBURG:

3 Q. Well, during this period of time,
4 December 2012 to November 2013, other than -- other
5 than the beginnings of the RISE product, the three
6 live products were Plain Green, Great Plains Lending
7 and Mobiloans; am I right?

8 MR. SHELTON: Object to the form.

9 MR. SCHEFF: Object to the form;
10 misstates the evidence.

11 You can answer the question.

12 A. Yeah, actually, in 20-- by the end of
13 2013, we had -- boy, there was actually a fair
14 amount that had -- that had gone on. You know, we
15 had the press -- the product up and operational. I
16 think that spendable product and all of the ongoing
17 sort of negotiations of trying to expand that, I
18 think there was some period of time here we had
19 launched the Elastic product in 2013. We had
20 restructured PayDay One entirely to be RISE, and
21 there's a cost associated with that. You know,
22 legal consulting and contractor associated with
23 that. So -- oh, and then, of course, the UK, you
24 know, we bought that business in 2010 but we
25 relaunched the whole product in 2013.

1 So 2013 was actually a year of tremendous
2 amount of product innovation and launches. So
3 I'm -- I would certainly not suggest that there
4 wasn't a meaningful amount of expense related to the
5 three tribal businesses, but we had an awful lot
6 going on as a company. And so I can't speak to how
7 much of this was related to, you know, the
8 transition of the -- that the original product,
9 the -- and then, of course, the expected spinoff of
10 the business later, there's legal work related to
11 that.

12 So this was a time of tremendous amount of
13 activity as we launched three new products, were
14 preparing to go public -- excuse me -- preparing to
15 spin off, and then also thinking long-term about
16 what the prospects of the company might be.

17 BY MR. ACKELSBURG:

18 Q. Well, just going down the list, Patton
19 Boggs, that was tribal model related, right?

20 MR. SHELTON: Let me insert an
21 instruction and an objection here. So what I
22 understand counsel is about to do is ask you
23 questions regarding the legal services that the
24 various law firms were providing here. That gets
25 into a tricky area because in some of these answers

1 you may be tempted to reveal, you know,
2 communications or details of what those legal
3 services are.

4 I'll say for purposes of this line of
5 questioning, I'm okay if you -- if you indicate
6 whether these law firms, in general, provided legal
7 services related to the tribal arrangements and if
8 you indicate whether these law firms provided legal
9 services other than in relation to tribal
10 arrangements. If you feel you need to go into any
11 more detail than that to answer any of his
12 questions, I would ask you to indicate that, and we
13 can step out in the hall and discuss that. Do you
14 understand?

15 THE WITNESS: Okay.

16 MR. SHELTON: Thank you.

17 BY MR. ACKELSBURG:

18 Q. So Patton Boggs, that was related to
19 tribal, right?

20 A. I think they were exclusively tribal.

21 Q. Okay. And, of course, the Native American
22 Financial Services Association, that would be
23 exclusively tribal, right?

24 A. Yes.

25 Q. And Victory Park management, that --

1 A. Probably a mix.
2 Q. Oh, because -- well, when did they start
3 funding RISE loans?
4 A. I thought there was a facility that we got
5 through Victory Park from -- well before 2013. And,
6 again, Chris would know better than I exactly what
7 the structures were.
8 Q. Okay. All right. So you're not sure about
9 Victory Park.
10 A. But I thought Victory Park was -- would
11 have been all -- and, in fact, I think they also
12 supported the growth that -- of the UK business by
13 this time.
14 Q. Okay. Obviously, payments to Mobiloans and
15 Plain Green were tribal related -- tribal related --
16 A. Yes.
17 Q. -- right?
18 A. Right.
19 Q. And, in fact, it's under "legal," am I
20 correct that part of the -- the agreement with both
21 of -- with all three of the tribes was that their
22 legal expenses would be reimbursed by the GPLS
23 revenue?
24 A. I don't --
25 MR. SHAPIRO: Object to form.

1 Go ahead.
2 A. -- remember exactly what the structure was,
3 but this suggests that we're cutting some form of a
4 check too Mobiloans for -- for legal expenses, but I
5 can't speak to what the structure was.
6 BY MR. ACKELSBURG:
7 Q. All right. And then Levick, they were
8 doing work in the tribal area, right?
9 A. I think they were exclusively tribally
10 focused. Just give me a second. You know, they
11 might have also been helping with broad-based PR
12 activities we were doing. It may have been a mix.
13 Q. Okay. And --
14 A. Katten would have been -- would have been
15 all aspects of the business, I believe.
16 Q. What about Coblenz?
17 A. In fact, definitely Katten because was, I
18 think, at this time representing Victory Park
19 Capital. So . . .
20 Q. So that would be coming out of the GPLS
21 revenues, right?
22 A. No, representing all of the relationships
23 they had with us. So setting up the facility to
24 support the RISE growth and the facility to support
25 the UK growth.

1 MR. SHAPIRO: Let me interject here.
2 Would you -- you're moving quickly. You know when
3 you're getting into privileged areas. We'll try to
4 assert privilege, but I would certainly appreciate
5 it that you honor that as we're moving along.
6 MR. SHELTON: And just for -- hold on.
7 For purposes of prior questions -- are you -- are
8 you done asking about Katten?
9 MR. ACKELSBURG: Yes.
10 MR. SHELTON: All right. So set that
11 aside for now. If he asks about Katten again, I
12 want to clarify a point, but you can move on for
13 now.
14 THE WITNESS: I'm sorry for jumping
15 ahead so quickly in that.
16 MR. SHAPIRO: No, it's not -- it's
17 really the witness's issue.
18 BY MR. ACKELSBURG:
19 Q. And Coblenz?
20 A. They were a corporate counsel for the
21 company is all from the original -- they had been
22 corporate counsel for me going back to -- to
23 CashWorks.
24 Q. What about Hogan Lovells?
25 A. I can't remember whether they were broader

1 based. I don't remember what we did with Hogan.
2 Q. Okay. Great Plains Lending, of course,
3 that was tribal?
4 A. Yes.
5 Q. And other vendors, we don't know?
6 A. Don't know.
7 Q. You don't know what's included in that,
8 right?
9 A. I expect it's a combination of things.
10 This looks to be -- and I'm -- you know, I'm -- just
11 looking at the list, this looks like sort of
12 comprehensive for all of the, you know, legal
13 consulting and contractors that we used across the
14 entire business, not just tribal. So it's bound to
15 be some mix.
16 Q. Well, and -- without going into every
17 single item here, you know, it all adds up to 15
18 million; you see that?
19 A. Uh-huh (affirmative response).
20 Q. And then there also was the revenue share
21 that you're paying the tribe every month, right?
22 A. The revenue share that was paid by the --
23 by the participation agreement from GPLS to the
24 tribe, yes.
25 Q. Well, but for every dollar that was --

1 every dollar paid to the tribe for revenue share was
2 less dollars paid to TCAS as an administrative agent
3 fee, right?

4 MR. SCHEFF: Object to form;
5 misconstruing the testimony.

6 BY MR. ACKELSBURG:

7 Q. That's the way that the economics were set
8 up, right?

9 A. The economics were as per the contract very
10 clear that GPLS would pay that share and that we
11 were providing a guarantee to -- to GPLS and we were
12 getting a share of the upside for that -- for that
13 loan portfolio. But I think it's pretty clear that
14 we were not paying that to the tribe.

15 Q. Oh, no, I understand that. And I'm -- I
16 apologize for maybe my sloppy question. But for
17 every dollar that was paid to the tribe by -- out of
18 GPLS revenues, that was a dollar less that would go
19 at the bottom of the waterfall to Think for the
20 administrative fee?

21 A. The terms of the deal were that --
22 actually, let me see if I can remember. It's been a
23 while now. So there was a waterfall of payments
24 that came out of the GPLS fund, some to pay for --
25 for the tribe's revenue share, some to pay for some

1 tribal expenses, some to go to the investors, and
2 then sort of whatever was leftover would -- would
3 come to us per the guarantee.

4 Q. Right.

5 A. So that's -- that's the structure of it.

6 Q. So -- so I think you're agreeing with what
7 I'm saying, but let me -- that under that structure,
8 if you have to pay, you know, an extra dollar to the
9 tribe, that's an extra dollar that's not going to be
10 at the bottom of the waterfall, right?

11 A. Since we weren't paying to the tribe, if
12 GPLS had to pay those, that would mean there would
13 be less excess cash flow for us as the
14 administrative agent. But, I mean,, to be clear, we
15 weren't paying those. That was not our
16 responsibility. That was something that, you know,
17 ultimately, GPLS and the -- and the tribe, you know,
18 had as part of the participation agreement.

19 Q. When you said to Mr. Curry in 2013 that --
20 that the tribal model is costing Think Finance a
21 million dollars a month, I mean,, are we looking at
22 part of what that -- what was -- what was included
23 in that \$1 million a month?

24 MR. SHAPIRO: Object. You misread, I
25 think in a significant way, what this document says.

1 It does not say it was costing a million dollars a
2 month. It says we're paying over a million dollars
3 a month, and that's a really important distinction
4 here.

5 MR. ACKELSBURG: Okay. That's fine.

6 A. So, I mean,, I -- to -- we sort of -- when
7 we had the previous discussion, even before I saw
8 this, I suggested that there were, you know, costs
9 related to legal expenses, costs related to the
10 support of the Native American Financial Services
11 Association and other sort of consulting costs
12 related to -- to serving the tribal market. So
13 there were true out-of-pocket expenses for us not
14 related to the operation of any individual tribal
15 program.

16 BY MR. ACKELSBURG:

17 Q. Okay. Do you remember the -- the
18 litigation that the -- the Otoe-Missouria had with
19 the State of New York?

20 A. Yes, I do.

21 Q. And, in fact, your -- your chief integrity
22 officer, Martin Wong, was part -- you know, part of
23 his responsibilities was to work on that litigation;
24 am I right?

25 A. He -- he coordinated with the counsel. I

1 think it was David Bernick who worked on that on
2 behalf of the tribes.

3 Q. So that would be additional legal expenses
4 that -- did that come out of -- who paid -- who paid
5 those expenses? Was that -- was that Think Finance?
6 Was that GPLS? Was that --

7 A. I think that was -- I think that was paid
8 by the Native American Financial Services
9 Association. I'm not sure about exactly how that
10 was paid. We contributed to supporting that -- that
11 legal process. So I don't --

12 Q. So it might have --

13 A. Actually, I don't -- I don't remember the
14 timing of whether it was in 2013 or whatever the
15 year is, but -- but in terms of -- it doesn't look
16 like, and I don't remember this, that we were making
17 any direct contributions to that. I think our
18 contributions were to the trade association, and the
19 trade association made the decision about how to
20 spend those with regard to the -- to the lawsuit.

21 MR. ACKELSBURG: Okay. Does anybody
22 need a break? Are we okay? Or can we keep going,
23 or what?

24 MR. SCHEFF: How do you feel?

25 MR. ACKELSBURG: That's a -- that's a

1 bad question.

2 MR. SCHEFF: That's the right
3 question.

4 THE WITNESS: I can keep going for a
5 while longer. Thank you.

6 MR. ACKELSBURG: All right. Okay. So
7 before, you alluded to the board -- the memos that
8 you wrote to the board of directors. I guess you
9 anticipated we were going to be looking at those,
10 and we are going to be looking at those, and I'm
11 going to move to them now. So if you'll just hang
12 with me one minute, I am going to get them.

13 So, Mr. Rees, to avoid the -- to try to
14 minimize the paper going back and forth like we have
15 been doing all day, what I have done is I've
16 assembled them in a book, which I am going to give
17 you. And we are going to identify them month by
18 month, but I thought it would be easier if -- and
19 these are all in chronological order to make things
20 more clear.

21 So what I am going to do is give you a
22 book. We are going to use this as the -- for the
23 court reporter, we'll just insert the stickers in
24 the book when we get to that page. For other
25 counsel, I've -- I didn't have the time to put them

1 easier if we just go month by month.

2 MR. SCHEFF: That's fine.

3 MR. ACKELSBURG: And we've already
4 identified a few of these with, I think, Jason
5 Harvison.

6 BY MR. ACKELSBURG:

7 Q. So before we get -- we get into these, I
8 have to say they're very impressive, they're very
9 extensive. It looks like every single month that
10 there was a board meeting, you've prepared a very,
11 very detailed report to the board in the form of a
12 confidential board memo regarding the previous
13 month's performance. Right?

14 A. As I said at the beginning, I think
15 transparency with the board is important. It's
16 really smart people, and we really use them to help
17 us understand the best direction to take the company
18 and also to be just good governance over us.

19 Q. Now, the board -- as I understand it, every
20 month the board would get your memo and also would
21 get something called the board dec?

22 A. Yes.

23 Q. Right? And that's a 90 page, a hundred
24 page, a fairly large PowerPoint of just data and
25 descriptive material about the previous month?

1 in hole punch, but I do have. . .

2 MR. SCHEFF: Thank you, Irv. Are
3 these in chronological --

4 MR. ACKELSBURG: Yes.

5 MR. SCHEFF: -- order and complete?

6 MR. ACKELSBURG: No.

7 MR. SCHEFF: Okay.

8 MR. ACKELSBURG: In other words,
9 because we don't have 14 hours, we only have seven
10 hours today, I basically was somewhat selective.
11 There's a lot in there. You know, I don't know
12 whether we'll even get to them.

13 MR. SCHEFF: You can mark what you
14 want to mark. I just want to understand --

15 MR. ACKELSBURG: They're in
16 chronological order, but in some cases I skipped
17 months intentionally and sometimes I skipped months
18 because there were gaps in the production.

19 MR. SCHEFF: That's fine. I just
20 wanted to understand where you're at. That's all.

21 So are these going to be collectively
22 marked as an exhibit?

23 MR. ACKELSBURG: No, no.

24 MR. SCHEFF: Okay.

25 MR. ACKELSBURG: I think it will be

1 A. Yes, primarily financials and various -- a
2 lot of numerical and analytical information of the
3 company.

4 Q. Okay. Now, that -- that board dec would go
5 to Victory Park every month pursuant to the -- the
6 contractual agreements between Think and Victory
7 Park, right?

8 A. I think that's true. And the only reason
9 I'm not a hundred percent certain is, you know, at
10 one point in time they actually had a representative
11 at the board meetings, and I don't remember exactly
12 when that happened. It may have happened --
13 frankly, it may have happened after Think Finance.
14 I do believe that they got -- at least at some
15 period of time they were getting board materials. I
16 don't know if it was from the beginning of our first
17 interactions with them back in -- with First Bank of
18 Delaware or sometime later.

19 Q. Do you remember when Victory Park first
20 started sending representatives to the meeting
21 itself?

22 A. I don't. And, in fact, having mentioned
23 this, I don't even know if it happened --

24 Q. Before or after the spinoff?

25 A. Before the spinoff. It may have only

1 happened after the spinoff.

2 Q. Right. Because you were still chairman of
3 the board at Think after the spinoff while you were
4 CEO of Elevate?

5 A. There was a transition period for about a
6 year that there was a sort of, you know, getting
7 the -- the spinoff. I mean,, there's just some --
8 some shared resources as we were sort of in that
9 transition period. I think it lasted about a year,
10 though.

11 Q. Okay. So my question is, you sent the
12 board dec to Victory Park every month. Did Victory
13 Park also get the confidential memo from Ken Rees to
14 the board?

15 A. And, again, just to clarify, I don't know
16 exactly what time -- period of time Victory Park
17 Capital got the board decs, and I don't know if they
18 saw the board memo. I don't know why they wouldn't,
19 but I don't know that they did.

20 Q. Okay. Maybe they did, maybe they didn't;
21 you don't know?

22 A. I just don't know.

23 Q. Okay. All right. So we are going to go
24 through some of these in order, and we're starting
25 with your report to the board, your memo to the

1 then you get -- you give a little bit of the actual
2 numbers. In this case, it says "August
3 Performance." And then you gave -- then you would
4 give a product-by-product description, and sometimes
5 you would have other matters that you would include
6 also. Right?

7 A. That's correct.

8 Q. Okay. So one of the things I noticed in
9 every one of these reports is that you have these --
10 in the financial section, you would have revenue,
11 you had loans outstanding, you have -- you have
12 charge-offs, these -- these sorts of key metrics.
13 And you're getting these from the actual P&Ls from
14 Chris Lutes every month, right?

15 A. Yes.

16 Q. Okay. And so with regard to loans
17 outstanding, that -- that particular metrics --
18 metric -- again, we're talking about September --
19 we're talking about the end of the fall -- the
20 summer and fall of 2010, at that point, it looks
21 like your products were PayDay One, ThinkCash and
22 Elastic, right?

23 A. Let's see. Didn't have UK. We hadn't
24 launched -- I think those were the products. And,
25 again, we have -- it's obvious that some we directly

1 board dated September 16, 2010. And if you'll --

2 A. I'm sorry, December 16, 2010. Okay. Thank
3 you.

4 Q. September.

5 A. September.

6 Q. And, actually, just --

7 MR. SCHEFF: He doesn't have it. You
8 never gave it to him.

9 BY MR. ACKELSBURG:

10 Q. Oh, I'm sorry. I never gave it to you.

11 A. I'm sorry, July performance, September 16,
12 2010. Thank you.

13 Q. Okay. And you'll see this -- this was
14 actually already used as an exhibit, I believe, at
15 Mr. Harvison's deposition. Mr. Harvison was a board
16 member, right?

17 A. Mr. Harvison was a board member at that
18 time, yes.

19 Q. Representing the Harvison family interest?

20 A. Yes.

21 Q. Okay. So you'll see this was previously
22 identified as P-114. So my first question is
23 that -- so the way this is organized, it looks like
24 you first had an introductory section where you kind
25 of summarized the high points. Then there was --

1 originate and some we're servicing with our
2 technology and licensing platform.

3 Q. And, actually, if you look ahead to page 3
4 about Elastic, it looks like there wasn't a lot of
5 activity in Elastic. It was -- you say, "We have
6 turned off all new customer acquisition." Do you
7 see that?

8 A. Yes.

9 Q. So for the most part, at this -- at this
10 point in time, the -- the summer and fall of 2010,
11 the company's business, from a financial standpoint,
12 was basically PayDay One and ThinkCash?

13 A. I mean,, certainly the revenue -- revenues
14 coming in were primarily from those products. But
15 as is kind of defined here under the Elastic
16 section, we are -- we are actively working on trying
17 to bring another bank live to complete what we
18 thought was a very attractive early sort of rollout
19 of the what at the time was called the Elastic
20 product.

21 So, I mean,, I think we would have, you
22 know, clearly viewed our business as -- as having a
23 direct consumer component and then two distinct --
24 it says -- you -- you defined them earlier, two
25 direct -- indirect components, one with bank

<p style="text-align: right;">Page 253</p> <p>1 partnerships and one with tribal partnerships.</p> <p>2 Q. Well, at this point, there was no tribal</p> <p>3 partnership, though, right?</p> <p>4 A. Oh, you're absolutely right. Oh, gosh,</p> <p>5 I -- maybe it is later in the day. Right now, we</p> <p>6 were -- we had one bank partner. We were actively</p> <p>7 looking -- we had two bank partners, one where the</p> <p>8 revenue had obviously dropped off. It was super</p> <p>9 profitable, but we were trying to find another</p> <p>10 bank -- bank partner.</p> <p>11 So I guess what I'm responding to is -- I</p> <p>12 don't think at this time we would have said we just</p> <p>13 have PayDay One and ThinkCash. I think we still</p> <p>14 thought that the Elastic product was going to</p> <p>15 continue, just with a different bank partner.</p> <p>16 Q. By the way, so just looking at the revenue</p> <p>17 performance, the first bullet under "August</p> <p>18 Performance," revenue -- I mean, we're largely</p> <p>19 talking about revenues generated by, at this point</p> <p>20 in time, PayDay One and ThinkCash?</p> <p>21 A. I think that's right. I just don't know</p> <p>22 how much revenue was still coming from the Elastic</p> <p>23 product. We weren't doing new customer</p> <p>24 acquisitions, but oftentimes, the earnings are</p> <p>25 highest when you're not doing new customer</p>	<p style="text-align: right;">Page 255</p> <p>1 portfolio, we're talking about the performance of</p> <p>2 those loans, right?</p> <p>3 A. Yes.</p> <p>4 Q. Okay. Now, I do want to ask one question</p> <p>5 about the -- in the Elastic section on page 3, do</p> <p>6 you see in the -- in the -- in the second paragraph,</p> <p>7 it says, "We've been reviewing the customer</p> <p>8 profitability of the product and are pleased with</p> <p>9 the results. When we throw out monthly customers,"</p> <p>10 then you say, "(we'll force biweekly/semimonthly</p> <p>11 payments for all customers) and look at the results</p> <p>12 of our champion strategy, the product is showing</p> <p>13 strong margins."</p> <p>14 So my question is about -- about -- do you</p> <p>15 remember the decision to, basically, push all</p> <p>16 customers into an every two-week payment as opposed</p> <p>17 to a monthly payment?</p> <p>18 A. I don't -- I don't know -- I don't remember</p> <p>19 that we actually did that. I do know we talked</p> <p>20 about it. The -- for one reason or another, monthly</p> <p>21 customers had much higher defaults than biweekly and</p> <p>22 semimonthly. I don't know if it was because of the</p> <p>23 type of customer who's paid on a monthly basis</p> <p>24 versus the type that has, you know, sort of</p> <p>25 biweekly, semimonthly payments. But I know there</p>
<p style="text-align: right;">Page 254</p> <p>1 acquisitions.</p> <p>2 Q. I understand, because you don't have --</p> <p>3 A. Marketing costs.</p> <p>4 Q. -- you don't have the expense of trying to</p> <p>5 get those customers, right?</p> <p>6 A. Yeah.</p> <p>7 Q. Okay. Loans outstanding less than 61 days,</p> <p>8 this -- this would refer to the loans outstanding in</p> <p>9 the PayDay One and ThinkCash business primarily?</p> <p>10 A. And the Elastic.</p> <p>11 Q. All right. But -- okay. All three of</p> <p>12 them, right?</p> <p>13 A. Uh-huh (affirmative response).</p> <p>14 Q. Okay. And then on the next page, you talk</p> <p>15 about -- page 2 of the report, there's references to</p> <p>16 the PayDay One portfolio and the Think- -- and then</p> <p>17 in the next section, the ThinkCash portfolio. And</p> <p>18 my understanding is, is that the -- the P&Ls would</p> <p>19 also be broken out by product type so you would</p> <p>20 actually be able to see how the -- the direct</p> <p>21 product PayDay One is operating how the installment</p> <p>22 loan product was operating, for example, right?</p> <p>23 A. In the board dec it would have broken out</p> <p>24 the performance by product, yes.</p> <p>25 Q. Okay. So when we think about the ThinkCash</p>	<p style="text-align: right;">Page 256</p> <p>1 was a -- certainly a discussion at the time of</p> <p>2 whether we just say the loan product requires either</p> <p>3 a biweekly or semimonthly payment.</p> <p>4 Q. Now, that wasn't -- that difference in</p> <p>5 behavior, that wasn't only with regard to the</p> <p>6 Elastic product, right? I mean,, you saw that --</p> <p>7 you saw that across all products? Let me ask you a</p> <p>8 different question.</p> <p>9 Am I right that the way that the -- that</p> <p>10 the ThinkCash product with First Bank of Delaware</p> <p>11 was set up is that payments were made every two</p> <p>12 weeks?</p> <p>13 A. My recollection is payments were tied to --</p> <p>14 to when the customers paid. So it would have been</p> <p>15 at least biweekly and semimonthly payments. I</p> <p>16 thought the product also allowed customers to select</p> <p>17 a monthly, you know, payment structure. I'm not</p> <p>18 certain on that, but I -- I guess I would have</p> <p>19 thought they did.</p> <p>20 Q. There was a default, though, like, if the</p> <p>21 customer didn't -- didn't select something</p> <p>22 different, it would be every two weeks, right?</p> <p>23 A. Well -- and I can't speak to exactly how it</p> <p>24 worked, but my -- because we sort of changed how we</p> <p>25 determined that. You know, very early on, the</p>

1 customer would just say -- you know, would just
2 say, "How do you want to be paid?" More recently,
3 but I think it would have been at this time, we had
4 the customer give the next few pay dates for them,
5 and then we would associate the repayment schedule
6 for that loan to match with their anticipated pay
7 dates.

8 Q. So that the ACH could be targeted for the
9 date that they actually get their paycheck in
10 their -- in their bank account, right?

11 A. Assuming that the customer opted to pay by
12 automated ACH, yes.

13 Q. Well, that was most customers?

14 A. It was most customers. Customers had to --
15 had to select that.

16 Q. Okay.

17 A. And I know it goes without saying, but, you
18 know, these were -- since these were products where
19 we were the -- the technology and servicing
20 provider, any -- any discussions or the sort of
21 changes to the structure, and like we're talking
22 about with Elastic, would have been done in concert
23 with the -- with originator of the credit.

24 Q. In the last section on page 4, talk about
25 the plans for a -- I guess a branding or something

1 called "Banking for the rest of us" that was a
2 slogan that ran across all your products?

3 A. I don't know that it ran across our
4 products, but I think we were becoming aware that
5 the need that we were serving was very much a
6 mainstream need. There was more awareness of the
7 fact that -- pardon me for this -- but, you know,
8 half of Americans have barely \$400 in savings,
9 two-thirds of Americans have a subprime credit
10 score.

11 So this is very much a mainstream need.
12 People didn't understand that it was a mainstream
13 need and mainstream credit product. So that sort of
14 "Banking for the rest of us," I don't know that we
15 even specifically used those words, but that was the
16 context of trying to raise visibility of the need
17 for better forms of nonprime credit and how we were
18 doing things that were helping mainstream consumers
19 have access to credit that was better than other
20 options available to them.

21 Q. And the last sentence suggests that this --
22 this new banner, this slogan would be, you say here,
23 "A key factor in how we differentiate ourselves from
24 alternative financial service providers, that is the
25 payday lenders, as we prepare to go public." Right?

1 Do you see that?

2 A. So it does say that. I -- just to clarify,
3 I don't know that we ever used "Banking for the rest
4 of us" in any -- actually any public facing. I
5 think it was just really, as I recall it, more of
6 our internal thinking about how do we raise the
7 visibility of these products as mainstream products.
8 In retro- -- "Banking for the rest of us" is not a
9 great logo. I don't know that we did much with
10 that.

11 But, yes, we did as -- it says here, we
12 thought it was important to distinguish our products
13 from those sort of payday lenders, both in terms of
14 the structure, the pricing and the fact that they
15 don't help customers build credit. And then,
16 secondarily, we were conscious of the fact that at
17 some point in time, a liquidity event, like an IPO,
18 would be a good thing for our investors.

19 Q. But -- so when you started with the company
20 in 2004, the main product was PayDay One, right?

21 A. The -- the product that was live at the
22 time was PayDay One. Actually, there was -- I think
23 there was a couple of other products.

24 Q. Like PayDay Select? PayDay Okay?

25 A. No, I think PayDay Okay was live when I

1 joined. PayDay Select was launched afterwards. And
2 there was that bank product. I don't know what the
3 name of that was. It was before my point in time.

4 Q. Because at one point were you -- were you
5 running, like, three payday websites at the same
6 time: PayDay One, PayDay Select and PayDay Okay?

7 A. I think that was right. Different --
8 different channels for each one was the general
9 idea.

10 Q. Was it more or less the same product or. . .

11 A. They were -- actually, I can't remember. I
12 think there were pricing differences and channel
13 differences.

14 Q. When you say --

15 A. I think at the time, also, there was this
16 idea that because Google, in particular, for search
17 engine marketing, you were rewarded by having a
18 placement. You know, if somebody typed in "payday
19 loan," you would get a placement. But if you have
20 three products, you take up the top three
21 placements. So you're getting more of sort of the
22 customer eyeballs, and you have a better chance that
23 the customer is going to go to one of your websites.

24 Q. I see. Okay.

25 But what -- regardless of the label,

1 whether it was Payday One, PayDay Select, PayDay
2 Okay, I mean,, your primary business, certainly up
3 until the time that you began with First Bank of
4 Delaware, your primary business was payday loans,
5 right?

6 MR. SCHEFF: Object to the form, and
7 misstates the testimony.

8 You can answer the question.

9 A. As I -- as I -- as I mentioned, when I came
10 on board, I didn't know a whole lot about the
11 alternate lending products. And what I knew about
12 PayDay One at the time and PayDay Okay was that it
13 was a discounted product versus sort of the classic
14 payday loans that were online, and they developed
15 some technology that I thought was really
16 interesting.

17 And as I mentioned, we began thinking
18 about ways to structure the product to allow
19 customers to pay it down for a longer period of time
20 and then evolving into, you know, installment loans
21 and lines of credit.

22 So that was antici- -- I can't say exactly
23 when we began -- you know, I probably can go back to
24 early board memos to see an evolution of how we
25 began to think about the product and an increasing

1 commitment to doing more than just providing credit
2 but also helping with the financial help with
3 customers at the same time.

4 BY MR. ACKELSBURG:

5 Q. Well, I'm just curious about the connection
6 about going public and differentiating yourself from
7 the payday lenders. Why was that important?

8 MR. SCHEFF: Object to the form; lack
9 of foundation.

10 You can answer the question.

11 A. I mean, we certainly had, rightly or
12 wrongly, a lot of pride in the products as being a
13 better solution for customers than -- than payday
14 loans and thought that it was important to highlight
15 that we are serving a customer that's typically
16 being served by a payday loan, but this -- that the
17 products that we either had in market or thought
18 that we would be bringing into market in the future
19 were representing a sort of new breed of more
20 responsible credit to those customers.

21 And when we were talking to the investor
22 community, we didn't want them thinking, oh, this is
23 just a payday loan. We wanted to be able to
24 distinguish both the pricing differences, which as
25 we've highlighted we thought were significant; the

1 structural differences in that they allowed the
2 customer to pay down over time, and we thought that
3 helped prevent the cycle of debt that the consumer
4 groups were concerned about; and that, also, we were
5 doing things like reporting to credit bureaus and
6 providing -- and at this point in time, 2010, I
7 don't know what financial wellness activities we
8 had. Probably none, frankly, other than reporting
9 to credit bureaus.

10 But there was already a sort of growing
11 view that -- that it was important to help customers
12 with financial -- I don't know exactly if we had
13 that in 2010, but that was sort of the evolution of
14 how we thought about our mission and how we thought
15 about what we were trying to do in growing the
16 business.

17 BY MR. ACKELSBURG:

18 Q. Okay. Why don't you turn the page to the
19 next --

20 MR. SHELDON: Are we near time for a
21 break?

22 MR. SCHEFF: We have been going for
23 about an hour and 15.

24 MR. ACKELSBURG: All right.

25 THE VIDEOGRAPHER: We are off the

1 record. The time is 3:47 p m.

2 (Break taken, 3:47 p m. to 3:53 p m.)

3 THE VIDEOGRAPHER: We are back on the
4 record. The time is 3:53 p m.

5 BY MR. ACKELSBURG:

6 Q. All right. So we're now looking at your
7 report of November 17, 2010. This has already been
8 marked as Plaintiff's Exhibit 118. Okay? And if
9 you'll look in the second paragraph, it mentions
10 that at the meeting, "We will discuss our plans for
11 moving ahead with Great Plains Financial which could
12 replace all of the lost ThinkCash revenues as well
13 as open our growth prospects in new states." Do you
14 see that?

15 A. Yes.

16 Q. Okay. And then I think on page 2 you get
17 into more detail about that. So in the third
18 paragraph in the ThinkCash section, you say that --
19 that you're proposing to migrate the ThinkCash
20 balances to a new lender -- or another lender that
21 will be able to lend in all -- in 48 states, all
22 except South Dakota and West Virginia. Do you see
23 that?

24 A. Yes.

25 Q. Okay. Now -- so when you say "propose to

1 migrate the balances," why don't you just explain
 2 what that -- what that means.
 3 A. So as the -- the ThinkCash -- at this
 4 point, the ThinkCash portfolio pays down, you know,
 5 they -- I'm sorry, I'll sort of just provide all the
 6 background. So the way the portfolios work, we
 7 provide the marketing services to help the lender
 8 originate the loan. There's marketing costs
 9 associated with that. Then once those customers are
 10 acquired, if you will, if the customers need more
 11 credit over time, they typically come back to that
 12 same lender.

13 And this is a customer that is a pretty
 14 income constrained, doesn't have a lot of credit
 15 options. And so there is a fair amount of reuse of
 16 the product by customers once they pay off their
 17 first loan. So this is referring to the customers
 18 that paid off their loans, getting them a, you know,
 19 new loan with a new lender and sort of optimally
 20 keeping that portfolio balance as -- as high as
 21 possible.

22 Q. And that's ultimately what happened with
 23 regard to -- the ThinkCash customers ultimately were
 24 migrated to Plain Green rather than Great Plains
 25 Lending, right?

1 A. Yeah, you know, "migrating" is a -- is a
 2 weird term because it's really more of a remarketing
 3 to those customers and making them aware of that
 4 loan product so they don't just go to some other
 5 lender. But, yes, ultimately the way it happened --
 6 there's a few different twists and turns along the
 7 way, but ultimately, the ThinkCash customers were
 8 redirected -- or remarketed to -- to Plain Green
 9 when that product became live.

10 Q. Now, my understanding of the -- the deal
 11 documents with the First Bank of Delaware was that
 12 the decision of -- that it was actually First Bank
 13 of Delaware which made the decision which states
 14 ThinkCash would or would not be in. Is that your
 15 recollection?

16 A. Oh, yes.

17 Q. Okay. And so that's kind of what you're
 18 referring to when you're saying that there's the
 19 potential of expanding the product to all -- well,
 20 to 48 -- to a larger number of states because you no
 21 longer would be bound by what First Bank of Delaware
 22 was deciding with regard to state coverage; am I
 23 right?

24 A. I'm -- actually, I don't know what the
 25 state coverage of the bank was, whether it was --

1 there was a complete overlap or a -- or a change in
 2 the lending structure. But in both the cases of the
 3 bank and with the tribal lenders, ultimately, the
 4 originating lenders made the -- the final decision
 5 on what customers -- you know, what states they
 6 would originate into.

7 Q. Even -- really? With Plain Green and Great
 8 Plains Lending, they're the ones that, when you say
 9 "made that decision," I'm sure there was an approval
 10 of some sort. But in terms of actually analyzing
 11 the states and figuring out where you would go or
 12 where you wouldn't go, just be careful because
 13 they're -- they're about ready to all jump at this
 14 but you're sure -- but you said it was the tribes
 15 that made that decision, right?

16 A. I said -- I said --

17 MR. SCHEFF: Object to the form.
 18 There was a lot in your so-called question before
 19 you asked the question that was incredibly
 20 objectionable. So object to the form.

21 You can answer the question.

22 A. So I said ultimately that decision is one
 23 of the originating lender. And, I guess, the
 24 example I give is I think it's the case -- and,
 25 again, hopefully I'm right -- in the case of the

1 Otoe-Missouria, they didn't want to originate any
 2 loans in the state of Oklahoma --

3 BY MR. ACKELSBURG:

4 Q. And --

5 A. -- for one reason or another.

6 Q. -- Plain Green didn't want to originate any
 7 loans in the state of Montana, right?

8 A. Right.

9 Q. And the Tunica-Biloxi didn't want to
 10 generate any loans in the state of Louisiana?

11 A. That may be correct.

12 Q. Okay. So other than the states in which
 13 they actually resided -- by the way, do you know why
 14 none of these tribes wanted to lend this -- to offer
 15 these loans to other residents of their state?

16 A. I believe that was advice they got from
 17 their counsel. I don't know the specifics of what
 18 that advice was based on.

19 Q. Okay. But with regard to Plain Green or
 20 Great Plains Lending, I mean,, for the most part, at
 21 least initially, other than Louisiana, Montana and
 22 Oklahoma, they were all in or not in the same list
 23 of states, right?

24 MR. SCHEFF: Object to the form.

25 A. And so, again, to my --

1 BY MR. ACKELSBURG:
 2 Q. "Yes" or "no"?
 3 A. Well, the same list of states other than
 4 those -- there may be some differences; I don't
 5 know. But, generally speaking, the decisions on
 6 which -- which states to lend into and out of were
 7 consistent, but that -- if you would let me finish
 8 my response to you, which is that the tribes make
 9 the ultimate decision, but, you know, we also
 10 helped -- I'm just wondering about -- about
 11 privilege issues.
 12 MR. SCHEFF: Careful about that.
 13 A. So...
 14 BY MR. ACKELSBURG:
 15 Q. You made recommendations?
 16 A. Well, we had a perspective on states where
 17 there would be more litigation, more challenges.
 18 Q. Okay. And that perspective would be
 19 communicated to the tribes, and then the -- and then
 20 the tribes would either agree or not agree with
 21 the -- with that perspective?
 22 A. Yeah. I mean, there was a -- now I'm
 23 getting into the privilege, because there's --
 24 there's sort of a consistent group of -- of
 25 attorneys that met together to decide what was the

1 appropriate states to go into.
 2 MR. SCHEFF: Hold on.
 3 THE WITNESS: Okay.
 4 MR. SCHEFF: You can give whatever
 5 direction you want to give.
 6 MR. SHELTON: All right. Mr. Rees,
 7 I'd ask you not to reveal anything with regard to
 8 the decision whether or not to provide services in
 9 any state for Think Finance. That would be a
 10 communication involving outside or inside counsel,
 11 you know, where there was legal advice being
 12 provided. So if your answer to the question is that
 13 a decision was made, you know, in conjunction with
 14 counsel, provide that answer but don't go any
 15 further, please.
 16 THE WITNESS: Okay. Thank you.
 17 BY MR. ACKELSBURG:
 18 Q. So without telling me what the lawyers
 19 recommended, please identify the team of lawyers
 20 that were making those recommendations.
 21 A. Well, it would have been --
 22 MR. SCHEFF: At what time?
 23 BY MR. ACKELSBURG:
 24 Q. Well, let's start -- let's start at the
 25 beginning -- at the beginning in 2011 when all of

1 them began. Right? And then we can talk 2013.
 2 THE WITNESS: And that's okay
 3 listing --
 4 MR. SHELTON: You can identify the
 5 lawyers that provided Think with legal advice.
 6 A. Think and -- and really the tribes. So it
 7 would have been the combination of the tribal
 8 attorneys, including in -- in at least in one case
 9 the -- Pepper Hamilton. It would have been people,
 10 like, Claudia Callaway with --
 11 BY MR. ACKELSBURG:
 12 Q. Whatever?
 13 A. I think she was at Katten Muchin at the
 14 time. It would have been our general counsel, and
 15 it would have been the general counsel of the tribes
 16 would be the general groups that were working
 17 together to ultimately come up with what they
 18 thought was the optimal states to -- to lend into.
 19 Q. And what about any involvement of Victory
 20 Park?
 21 A. Oh, I don't know. I think they would have
 22 had a perspective since they were buying
 23 participations, and they could have elected not to
 24 buy participations in certain states. I don't
 25 remember whether their counsel was directly

1 involved; although, they were using Katten Muchin
 2 for some of the contract work. So I don't know if
 3 they -- if they used regulatory counsel and were
 4 involved in that discussion.
 5 MR. SCHEFF: Again, Mr. Rees, if you
 6 know the answer to a question, provide it.
 7 THE WITNESS: Yeah.
 8 MR. SCHEFF: If you don't, just say
 9 you don't know.
 10 A. I just don't know the answer.
 11 BY MR. ACKELSBURG:
 12 Q. Well, do you remember --
 13 THE WITNESS: I'm sorry.
 14 MR. SCHEFF: That's all right.
 15 BY MR. ACKELSBURG:
 16 Q. Do you remember a lawyer named John
 17 Williams that was advising Victory Park?
 18 A. I don't remember that name.
 19 Q. Okay. And what about in 2013, I mean, was
 20 it the same group that would have been making any
 21 decisions about -- my understanding is that there
 22 was something called a no-state list that was
 23 generated around April of 2013. Does that jog your
 24 memory at all?
 25 A. Well, the first question, there was

1 certainly different attorneys by that time, as we
2 mentioned some of the attorneys that -- that Think
3 was using later by 2013. I think that was the list
4 we were looking at. So it was certainly more
5 expansive than the views of --

6 MR. SHELDON: Okay. Stop. If you are
7 going to provide views of attorneys or in-house
8 counsel, please don't go there.

9 THE WITNESS: Thank you.

10 MR. SHELDON: You may disclose the
11 identities of counsel who provided advice and you
12 may disclose if they provided advice regarding the
13 tribal arrangements or not, but please, be careful
14 not to go into any views that were expressed to you
15 or by you to your attorneys. Understood?

16 THE WITNESS: Thank you.

17 MR. SHELDON: Thanks.

18 A. Do you want a list of those other
19 attorneys?

20 BY MR. ACKELSBURG:

21 Q. Sure.

22 A. So I believe people, like, Patton Boggs
23 were involved at that point. And I just don't
24 remember the others. There was -- I mean,, between
25 the trade organization attorneys, the -- the tribal

1 attorneys, our evolving attorneys at Think Finance,
2 to the extent -- to the extent that Victory Park
3 were -- attorneys were involved in those decisions,
4 there was a lot of attorneys that were working
5 together to determine the best states to -- for --
6 for the tribes to lend into.

7 BY MR. ACKELSBURG:

8 Q. Okay. In -- returning to the text of
9 the -- of the report we were looking at, you say
10 that, "We propose to migrate the balances to another
11 lender that will be able to lend in 48 states all
12 except to South Dakota and West Virginia."

13 Now, do you remember what was unique about
14 South Dakota and West Virginia?

15 MR. SCHEFF: Again, to the extent you
16 can answer this question without revealing advice of
17 counsel, do so. If you can't, just tell us.

18 A. I do remember this, but I -- but this is --
19 this is based on counsel, the decisions about -- the
20 recommendations on South Dakota and West Virginia.

21 MR. SCHEFF: I expect Mr. Sheldon will
22 direct you not to answer the question.

23 MR. ACKELSBURG: That's fine. I'll
24 just move on.

25 A. And -- but I -- I just I wanted to

1 highlight, because I thought the last answer -- I
2 mean, -- I mean,, we're talking about October. This
3 was very early in evaluating business opportunities.
4 So this is probably not particularly well thought
5 through. This is sort of early views on what might
6 happen.

7 BY MR. ACKELSBURG:

8 Q. So in the last section on page 2, it's
9 called "Regulatory," and you're talking about the --
10 the regulatory environment for banks being in
11 partnerships like -- I assume you mean like -- like
12 the relationship that you had with First Bank of
13 Delaware, that -- that that's -- those opportunities
14 have eroded because of the regulatory environment.
15 Right?

16 MR. SCHEFF: Object to the form.

17 You can answer the question.

18 BY MR. ACKELSBURG:

19 Q. And the next sentence, it says, "Both the
20 OTS and the FDIC have made it clear they don't want
21 innovation and are comfortable with the dramatic
22 reduction in consumer credit."

23 Now --

24 MR. SCHEFF: Hold on. There's no
25 question in front of you.

1 THE WITNESS: Thank you.

2 BY MR. ACKELSBURG:

3 Q. Do you remember making that assessment or
4 assessments like this in the past?

5 A. It certainly was a response to the
6 frustrations. I -- I don't remember exactly writing
7 this, but I had -- I think a lot of us did, I had a
8 lot of frustration on the -- what we saw as a
9 changing regulatory environment where following the
10 recession, regulators were really pushing banks to
11 tighten up credit quality in what we thought was not
12 serve -- underserved customers, in particular
13 subprime customers.

14 And that -- that, you know, then led to --
15 and I don't think at this time the Operation Choke
16 Point was in place, but that was sort of a changing
17 regulatory environment that we felt was constraining
18 access to credit to -- to Americans and constraining
19 the ability of banks to serve that.

20 Q. This is actually --

21 A. I think I --

22 Q. -- in 2010, right?

23 A. I think in retrospect I certainly
24 overstated they don't want innovation. I wouldn't
25 have -- I would not -- no longer stick with that.

<p style="text-align: right;">Page 277</p> <p>1 But there -- there was a period of time where the</p> <p>2 OTS and the FDIC were -- and this is right after the</p> <p>3 recession -- really urging banks to tighten up their</p> <p>4 credit standards quite a bit.</p> <p>5 Q. Well, banks weren't really doing much in</p> <p>6 this space anyway, right?</p> <p>7 A. Well, it's -- I mean, they're actually in</p> <p>8 the, what was it, '07, '08 time, there was actually</p> <p>9 a fair number of partnerships with -- with banks</p> <p>10 and --</p> <p>11 Q. Oh, you mean like --</p> <p>12 A. -- and credit providers.</p> <p>13 Q. -- like First Bank of Delaware, like those</p> <p>14 kind of partnerships?</p> <p>15 MR. SCHEFF: Object to the form.</p> <p>16 A. Like those and others.</p> <p>17 BY MR. ACKELSBURG:</p> <p>18 Q. Okay. Why don't you flip the page. We're</p> <p>19 now into January of 2011. This is also a report</p> <p>20 that we discussed -- a board memo we discussed with</p> <p>21 Mr. Harvison. So this is P-123. If you'd turn to</p> <p>22 page 2, there's a discussion of advances in risk</p> <p>23 scoring. And, I mean,, we've previously -- you</p> <p>24 previously talked to us about the risk and analytics</p> <p>25 platform, and this is -- you're just -- you're just</p>	<p style="text-align: right;">Page 279</p> <p>1 A. At this point in time, that's what we felt.</p> <p>2 Q. All right.</p> <p>3 A. I guess I just wanted to highlight --</p> <p>4 Q. Sure.</p> <p>5 A. -- but you sort of suggested that we were,</p> <p>6 you know -- you know, at this point in time sort of</p> <p>7 viewed our -- our business as PayDay One and</p> <p>8 ThinkCash. This is my recollection, I didn't see it</p> <p>9 on the previous, but there was this view that we had</p> <p>10 some pretty exciting other bank partnership</p> <p>11 opportunities that we were, at that point in time,</p> <p>12 confident about being able to close on. First</p> <p>13 Premier was one. Later, there's -- there's other</p> <p>14 banks. So throughout this time period, we're still</p> <p>15 very aggressively focused on trying to license our</p> <p>16 technology to banks as well as nonbank lenders.</p> <p>17 Q. And had there been a bank willing to do</p> <p>18 the -- a product like First Bank of Delaware, it</p> <p>19 might have -- you might have gone in that direction</p> <p>20 rather than tribal, right?</p> <p>21 MR. SCHEFF: Object to the form; calls</p> <p>22 for speculation.</p> <p>23 You can answer the question if you can.</p> <p>24 A. I can't say which we would have proposed,</p> <p>25 which would have gone forward. It would have</p>
<p style="text-align: right;">Page 278</p> <p>1 giving the board some information about some</p> <p>2 enhancements that -- that the risk group is coming</p> <p>3 up with for that platform, right? Am I right?</p> <p>4 A. Yes.</p> <p>5 Q. Okay. And that's -- and those</p> <p>6 improvements, that -- that was -- even though it's</p> <p>7 under PayDay One, it would have been after the --</p> <p>8 the platform, in general, across all the products</p> <p>9 using -- using the decision engine, correct?</p> <p>10 A. Not necessarily. The risk scores were</p> <p>11 oftentimes developed for the individual portfolio.</p> <p>12 There was overlapping approaches, but sometimes</p> <p>13 there was a -- a uniform score. Most often the</p> <p>14 scores were kind of customized within each loan</p> <p>15 portfolio.</p> <p>16 Q. Okay. Now, you also -- you see it's</p> <p>17 ThinkCash/Great Plains Lending. So this is -- this</p> <p>18 is still -- and you can -- reading the text about</p> <p>19 you're still happy with the Otoe-Missouria. Do you</p> <p>20 see that?</p> <p>21 A. Yes.</p> <p>22 Q. So this is January 21st. Still, at this</p> <p>23 point in time, the assumption was it was going to be</p> <p>24 the Otoe-Missouria that were going to be sponsoring</p> <p>25 that first tribal installment loan product, right?</p>	<p style="text-align: right;">Page 280</p> <p>1 depended on the deal terms, I would imagine.</p> <p>2 MR. ACKELSBURG: Okay. All right.</p> <p>3 Let's turn to the next board report. And this is</p> <p>4 one that wasn't previously identified, so let's call</p> <p>5 this P-282. Let's just stick this in the book so</p> <p>6 you'll have it. Give me the book for a second. So</p> <p>7 Exhibit 282 is TF-PA 170233.</p> <p>8 (Exhibit No. 282 marked.)</p> <p>9 BY MR. ACKELSBURG:</p> <p>10 Q. So this is now a month later. And</p> <p>11 February 17th, 2011, and you're thanking God for</p> <p>12 PayDay One. Do you remember that?</p> <p>13 A. That's what I wrote here, yes. I don't</p> <p>14 specifically remember writing, "Thank God for PayDay</p> <p>15 One."</p> <p>16 Q. Well, because at this point you're -- this</p> <p>17 is -- it's already 2011. There are no more loan</p> <p>18 originations for ThinkCash, and the only -- you said</p> <p>19 the only domestic product we're marketing at the</p> <p>20 moment is PayDay One, right?</p> <p>21 A. You know, obviously, we had -- we had just</p> <p>22 bought the UK business, which was a pretty</p> <p>23 interesting opportunity. But PayDay One, at this</p> <p>24 point, was certainly the driving majority of what we</p> <p>25 could see as ongoing revenue streams.</p>

<p style="text-align: right;">Page 281</p> <p>1 Q. Okay. So in terms of ThinkCash to Great 2 Plains Lending -- now, this is now February 17th. 3 Still the assumption was you're going to be able to 4 close the deal with Mark Curry and the 5 Otoe-Missouria, right? 6 MR. SCHEFF: Object to the form. 7 A. As you know, we were looking to close the 8 deal with the Otoe-Missouria tribe directly. 9 BY MR. ACKELSBURG: 10 Q. Right. And this is now on page 2. You 11 say, "We are scrambling to bring Great Plains 12 Lending live in February. Although I expected 13 potential setbacks due to technical factors, the IT 14 team has done a fantastic job getting everything 15 ready ahead of plan," and they've "delivered a solid 16 platform on time." Do you see that? 17 A. Yes. 18 Q. Okay. So remember, I was asking you before 19 when we were looking at the "Gentlemen start your 20 engines e-mail," that was February 28th. So this 21 is -- this is, you know, 11 days before that. It 22 looks like the IT team has actually gotten the 23 platform ready to roll, you're just waiting for -- 24 waiting for the final deal to materialize, right? 25 MR. SCHEFF: Object to the form.</p>	<p style="text-align: right;">Page 283</p> <p>1 but we have your April report, and we're going to 2 identify this as P-283. I'm putting it in my book 3 rather than yours. It's late in the day. 4 (Exhibit No. 283 marked.) 5 BY MR. ACKELSBURG: 6 Q. So this is, roughly, two months after the 7 last report we looked at where it all looked like it 8 was moving towards Great Plains Lending. And not 9 only have you signed a deal -- 10 A. Actually, I think you mean -- oh, you're 11 right, Great Plains Lending. Thank you. 12 Q. And it looks like in the two months not 13 only have you closed a deal with a different tribe, 14 but it's already online and doing fantastic 15 business. Do you see that? 16 A. Yes, it looks like they're live by that 17 point, yes. 18 Q. And the reason it's doing so well is you 19 say, "Primarily due to former customers, and we 20 haven't even e-mailed the old ThinkCash customers 21 yet." Do you see that? 22 A. Yes. 23 Q. So at some point, an e-mail was sent to 24 ThinkCash customers advising them of the opportunity 25 to apply for loans to -- to --</p>
<p style="text-align: right;">Page 282</p> <p>1 A. As I said at the time, and I put in 2 perspective, there was an awful lot of activities 3 going on at that point. The acquisition of the -- 4 of the UK business, ongoing bank negotiations, but 5 we were very excited about the potential to bring 6 Great Plains live and -- and anticipate that that's 7 what would happen. 8 BY MR. ACKELSBURG: 9 Q. All right. Let's move to the next month. 10 By the way -- and I guess I should direct this to 11 Matt. 12 MR. ACKELSBURG: We don't -- I 13 don't -- we looked for it. I don't believe we have 14 the report that Mr. Rees presumably made to the 15 board in March of 2011 where, I think, we would have 16 had a little more information about -- about Plain 17 Green. So I believe I've made a request earlier in 18 some e-mail or letter, but if you could check, 19 please, about whether the March 2011 report exists, 20 and if it's -- or if it's being withheld. I mean,, 21 I... 22 MR. SHELTON: I'm happy to look into 23 it for you and report back after the deposition. 24 MR. ACKELSBURG: Thank you. 25 So let's -- let's -- we don't have March,</p>	<p style="text-align: right;">Page 284</p> <p>1 A. Plain Green. 2 Q. -- to Plain Green; you remember that, 3 right? 4 A. Yes. 5 Q. And that would have been an e-mail that you 6 probably reviewed it before it -- before it was sent 7 out? 8 A. Probably not. 9 MR. SCHEFF: Object to the form. 10 A. That's why our marketing team would have 11 made that creative decision on how to get that out. 12 I mean,, that was certainly the marketing channel 13 that was used. 14 BY MR. ACKELSBURG: 15 Q. Now, the way it worked for ThinkCash 16 customers and later Plain Green customers is that 17 they actually had a login where they didn't even -- 18 they didn't need to be invited, they needed to be -- 19 they didn't need to be on the internet looking for a 20 loan; they could literally log onto their account 21 and apply for a new loan. Am I right? 22 A. So customers who apply for credit get an 23 account name and a password, and they use that to 24 access what's called the "my account" page of the 25 websites, like most other online lenders. They can</p>

1 schedule payments. They see their -- their status.
2 And then after they have repaid their loan, they can
3 go back and apply for another loan.

4 Q. Right on that -- on that website by logging
5 in, right?

6 A. Right.

7 Q. Okay. So it sounds like what you're saying
8 is that either someone did that or they called the
9 call center, and without getting any marketing at
10 all, just from their own initiatives, were -- were
11 applying for these brand new Plain Green loans?

12 MR. SCHEFF: Object to the form.

13 A. I don't remember exactly what was
14 happening, but I do remember that -- I can't
15 remember exactly how during this interim period
16 customers found out about -- whether there was
17 search engine marketing going on that was directing
18 customers, but I -- I expect -- I mean, it's
19 mentioned here, that when people would call the call
20 center, I expect that the call center staff would
21 say: Hey, you may want to try this other -- this
22 other website. There may have been some text put on
23 the -- the ThinkCash site saying you may want to
24 apply for credit at this site. I don't know exactly
25 what was done.

1 BY MR. ACKELSBURG:

2 Q. So just looking at -- you're now -- we're
3 both, I think, at page 2, where in the middle of the
4 second paragraph, it says, "As far as we can tell,
5 the former customers have been calling the call
6 center regularly since the end of the year to find
7 out when the product would be available." Right?
8 Do you see that?

9 A. Yes.

10 Q. Okay. What call center are we talking
11 about? This is the one in Fort Worth, right?

12 A. No, I expect it would have been the one
13 that was set up by -- or that the -- the call center
14 that was used by First Bank of Delaware. They used
15 a third-party firm.

16 Q. Which fund was that? Was that Meta or . . .

17 A. Probably was Meta. I think that was the
18 firm that the bank wanted us to use.

19 Q. And you kept using it?

20 A. Yes, for some period of time. I don't
21 know -- we didn't -- we ended up ultimately
22 cancelling that contract.

23 Q. Well, even -- I mean,, in the beginning,
24 for example, Plain Green didn't even have a call
25 center; you needed to help them build one, right? I

1 mean, you financed them -- you provided money to
2 help them build a call center, right?

3 MR. SCHEFF: Object to the form.

4 A. They -- they contract with a -- with a
5 third party, just like the bank did, to provide
6 customer support services and collection services.
7 In addition to that, as they became more proficient
8 and they were able to train people up and staff
9 people up, they expanded their own call centers.
10 BY MR. ACKELSBURG:

11 Q. Well, with money supplied by -- it was a
12 loan from -- it was a credit facility agreement
13 between Think Finance and Plain Green to lend them
14 the money for the costs in building a call center.
15 You don't remember that?

16 A. I don't.

17 MR. SCHEFF: Object to the form.

18 BY MR. ACKELSBURG:

19 Q. No. Okay.

20 A. I mean,, I'm sure that --

21 MR. SCHEFF: You've answered the
22 question.

23 THE WITNESS: Okay. Thank you.

24 MR. SCHEFF: If there's another
25 question, he can put it on the table.

1 BY MR. ACKELSBURG:

2 Q. I think -- I think you were about to tell
3 me who would be a better source of that information.
4 So why don't --

5 MR. SCHEFF: Why don't you just ask
6 another question.

7 BY MR. ACKELSBURG:

8 Q. So who would be a better source of
9 information?

10 A. Well, I think the -- you know, certainly
11 Chris Lutes, the CFO, and the relationship managers,
12 Jason and Michelle, would probably more -- know more
13 of the details.

14 Q. Okay. And then at the end of the
15 paragraph, "We are planning a large e-mail drop to
16 former customers." That's what you were describing
17 before, right?

18 A. Yes.

19 Q. Okay. Look at the first paragraph of the
20 "ThinkCash/Great Plains Lending/Plain Green"
21 section. You say, "Despite all the problems with
22 the contracts, not to mention the legal expense, I'm
23 very pleased with the deal as it stands. It is
24 better for us economically than the one with First
25 Bank of Delaware." Do you see that?

1 A. Yes.

2 Q. Okay. And I just want to explore with you
3 how it was better. Now, I alluded to this before,
4 that part of that is the amount of the revenue
5 share, right? That's -- that might have been part
6 of how the economics were better, right?

7 MR. SCHEFF: Object to the form; calls
8 for speculation. Why don't you ask him a question
9 as opposed to whether something might be the case.
10 BY MR. ACKELSBURG:

11 Q. You can answer it now.

12 MR. SCHEFF: You can answer if you
13 can.

14 BY MR. ACKELSBURG:

15 Q. If you remember the question. I mean,,
16 that's the whole point, as you see.

17 MR. SCHEFF: It's not the whole point.
18 It's to make sure you ask a question that can be
19 understood and then answered so the record is clear.

20 A. Actually, I don't remember that there was a
21 question in that. I apologize.

22 BY MR. ACKELSBURG:

23 Q. Right. Okay. So I'm just trying to
24 explore with you the elements of the deal with Plain
25 Green as compared to First Bank of Delaware which

1 made the Plain Green deal better economically for
2 Think Finance.

3 A. I actually -- since I'm -- unfortunately,
4 at this point in time with the years, I don't know
5 the differences in the deal structures. I mean,
6 obviously, at a very high level that there was --
7 structurally, they were the same. There were -- I
8 think the bank retained more balances than the tribe
9 did. I think the bank -- and I don't even know what
10 the revenue shares were between the -- between the
11 various parties. So, I mean,, clearly, I thought
12 there were some advantages of this structure, but I
13 can't speak to what the -- the economic advantages
14 and differences were between them.

15 Q. Okay. Now, who is negotiating again for
16 Plain Green in setting up these structures?

17 A. Well, from our side, the primary sort of
18 relationship manager, if you will, was --
19 relationship managers would have been Jason and
20 Michelle. They spent the most time with the tribe
21 getting through this. But there was, obviously,
22 counsel and -- from -- from our side as well, as we
23 talked about, from Victory Park Capital's side.
24 And, actually, as you had pointed out, also then you
25 have the Haynes and Haynes' counsel involved in the

1 negotiations.

2 Q. Meaning Eckman?

3 A. I don't -- I don't know if he -- he might
4 have hired another counsel. We -- there was some
5 reference to a -- to a law firm that I had never
6 heard of before, and maybe that was his.

7 Q. Okay.

8 A. But there was, obviously, a lot of -- and
9 what I'm suggesting, a lot of parties, a lot of
10 counselors involved in the negotiation.

11 Q. Including Eckman?

12 A. Eckman on Plain Green, I would expect that
13 he was involved in the negotiations. I don't know
14 exactly what his role was, but he was -- he was --
15 he was an attorney involved in the discussions.

16 Q. Well, the term sheet required Plain Green
17 to hire Pepper and said that Think Finance would pay
18 for -- for Pepper, right?

19 A. I just don't know if he was being used for
20 negotiating the contract or just advising the -- the
21 tribal lender on how to establish their tribal
22 lending law and practices and other aspects of the
23 business.

24 Q. Okay.

25 A. I don't know -- I don't know if it was a

1 regulatory attorney, corporate attorney or
2 negotiating attorney, or all three.

3 Q. Now, Eckman would have known the revenue
4 share that First Bank of Delaware had because he
5 was --

6 A. Yes.

7 Q. Right? So presumably -- well, you don't --
8 MR. SCHEFF: Let's not presume. Let's
9 just ask a question.

10 MR. ACKELSBURG: All right. Let's
11 move to the next month. And this will be 286, I'm
12 sorry, 284. Do I have that right? Let's see. Let
13 me get my numbers straight.

14 MR. SCHEFF: There's no question
15 that's pending.

16 THE WITNESS: Thank you.

17 MR. ACKELSBURG: Why don't you give me
18 the book, and we'll. . .

19 THE WITNESS: Thank you.

20 MR. ACKELSBURG: I'll get you a
21 question as soon as your lawyer gets back in his
22 seat.

23 MR. SCHEFF: I'm in my seat.

24 (Exhibit No. 284 marked.)

25 BY MR. ACKELSBURG:

1 Q. So we are now looking at your report
 2 May 18, 2011, Plaintiff's Exhibit 284, TF-PA 710237.
 3 And, basically, you're giving a very positive
 4 account of the growth of the installment loan
 5 portfolio, right?
 6 A. Yes.
 7 Q. Which is called still "ThinkCash/Great
 8 Plains Lending/Plain Green." Do you see that in
 9 your -- in your report?
 10 A. Yes. It looks like from this -- and I
 11 don't remember, but from this it's suggesting that
 12 Plain Green was live and we believed that Great
 13 Plains would be coming live, it looks like they're
 14 saying hoping to go live in June.
 15 Q. So eventually you did make a deal with
 16 Great Plains Lending, obviously?
 17 A. Yes. And as we said, we had hoped to have
 18 a number of tribal lenders utilizing our software.
 19 Q. Okay. So the portfolio -- and this -- and,
 20 again, the portfolio you were referring to is the
 21 portfolio of customers, some of whom first became
 22 customers with ThinkCash and now they're either
 23 Great Plains or Plain Green, correct?
 24 MR. SCHEFF: Object to the form.
 25 A. Some of -- I'm sorry, can you just repeat

1 the question?
 2 BY MR. ACKELSBURG:
 3 Q. Well, we're looking at -- the way that this
 4 report is structured, you're looking at,
 5 generically, the installment loan portfolio,
 6 correct?
 7 A. I'm sorry, with regard to what? I mean,
 8 the -- obviously, the April performance covers the
 9 -- covers the payday loan product as well as the --
 10 Q. Well, I know that. But I'm just -- so turn
 11 the page to page 2.
 12 A. Okay, this -- this section here?
 13 Q. Yes.
 14 A. Yes.
 15 Q. And when it talks about "the portfolio" in
 16 this section, we're referencing the installment loan
 17 portfolio, right?
 18 A. Yes. Thank you.
 19 Q. And inclusive of the ThinkCash balances and
 20 the new -- and the new tribal customers, correct?
 21 A. That's right.
 22 Q. Okay. And so in the next paragraph we see
 23 that not only is the deal better economically for
 24 Think Finance than the deal with First Bank of
 25 Delaware, you say that the tribe is easier to work

1 with than First Bank of Delaware was?
 2 MR. SCHEFF: Object to the form.
 3 BY MR. ACKELSBURG:
 4 Q. Do you see that?
 5 MR. SCHEFF: Object to the verbiage in
 6 the question.
 7 You can answer -- answer the last question
 8 with reference to what you have stated in this
 9 exhibit.
 10 THE WITNESS: Sure.
 11 MR. SHELTON: Let me just point one
 12 thing out, too, is that -- and this is partly my
 13 failing -- we're dealing with documents that are,
 14 you know, four pages long, single spaced, and I
 15 realize now that we haven't been giving the witness
 16 adequate time to -- to skim the whole document,
 17 necessarily, or even, you know, counsel at times.
 18 So I would just instruct if you need more time to
 19 skim the entire document, to get the context or
 20 anything, please do so. And you are welcome to do
 21 so either up front, or if you decide you need it for
 22 any particular question, you can take as much time
 23 as you need at any point to review it. Okay?
 24 THE WITNESS: Okay. Thank you. And I
 25 should have been doing that as well.

1 A. I just -- if you're sort of asking about
 2 this -- this context, you know, the FBD was -- had a
 3 lot of changes along the way, and FBD had, I think
 4 correctly as a bank partner, based on their -- the
 5 guidance they got from the FDIC and their continued
 6 thinking about how to structure the program, had us
 7 restructure it a number of times. So this was a
 8 pretty stable product, at least in our minds and the
 9 minds of -- of the tribe.
 10 I mean,, candidly, it's -- it's why it was
 11 a very, very attractive product because it wasn't a
 12 startup product and it already had a cash flow. So
 13 it was -- as opposed to First Bank of Delaware that
 14 only got sort of cash flow from the product after
 15 some period of time after it ramped. This product
 16 brought cash flows to the tribe day one. So they
 17 were -- they were, obviously, pretty happy with the
 18 bottom line impact to -- to the tribal economic
 19 development.
 20 BY MR. ACKELSBURG:
 21 Q. In the last -- in the last paragraph, you
 22 say, "To provide political air cover for tribal
 23 lending, we are establishing an industry
 24 organization for lobbying and for internal policing
 25 of lending practices." Do you see that?

1 A. I do see it.
 2 Q. Okay. And that references -- my
 3 understanding is the early organization was called
 4 NALA, N-A-L-A?
 5 A. To -- just in point of clarifying this, you
 6 know, when we say "we," this is the royal we of the
 7 parties involved with -- you know, us as a service
 8 provider, the tribes we were servicing, their other
 9 people sort of interested in the space, and we had
 10 seen the benefit of what the online lending alliance
 11 had been able to do from a government affairs
 12 perspective and promulgating best practices, and we
 13 were working with the tribes to build up an industry
 14 association in the same way.
 15 Q. Okay.
 16 A. And we say actually -- in fact, it says
 17 that the "industry association for lobbying and
 18 internal policing of lending practices."
 19 Q. And, in fact, one of the -- and that was,
 20 actually -- and Think had to support that
 21 financially as well; am I right?
 22 A. Think as a vendor to the industry, like --
 23 like all the other vendors that were members, there
 24 was a financial contribution or membership fee.
 25 Q. Okay.

1 A. And, actually, I think the -- the tribes
 2 had a membership fee as well, I believe.
 3 MR. ACKELSBURG: Where are we on the
 4 time?
 5 MR. SCHEFF: You are probably a few
 6 minutes shy of six hours.
 7 MR. ACKELSBURG: Okay. Let's -- let's
 8 turn to the next one. This is P-285.
 9 (Exhibit No. 285 marked.)
 10 BY MR. ACKELSBURG:
 11 Q. We're now looking at your report -- we
 12 skipped a few months. We're now --
 13 A. If I could, he's right, I should --
 14 Q. Yeah, yeah, yeah.
 15 A. -- familiarize myself.
 16 Q. I'm going to -- I'm going to give you a
 17 chance to look at it.
 18 A. Thank you.
 19 Q. I'm just situating it.
 20 A. Okay.
 21 Q. We moved ahead a few months.
 22 A. Thank you.
 23 Q. This is now October 19th, your report about
 24 September's performance in 2011. And I want to give
 25 you a chance to review it.

1 A. Great. Thank you.
 2 Q. And I should tell you that my only
 3 questions are going to be about -- well, why don't
 4 you just review it. Then we'll --
 5 A. Okay.
 6 Q. Yeah, that's -- that's fine.
 7 MR. SCHEFF: Read as much of it as you
 8 think you need to.
 9 A. (Reviews document.)
 10 Thank you.
 11 MR. SHELTON: Just one more second.
 12 Okay. Thank you.
 13 BY MR. ACKELSBURG:
 14 Q. Mr. Rees, if you could turn to page 2 of
 15 this memo to the board memo, under "Great Plains
 16 Lending/Plain Green," and in the second paragraph,
 17 you state that, "The product and risk teams have
 18 just rolled out revised underwriting rules that
 19 should get our fund rates and CPL back to target
 20 levels while keeping defaults at low levels." Do
 21 you see that?
 22 A. Yes.
 23 Q. Okay. So, again, we're talking about the
 24 risk and analytics platform here?
 25 A. Yes.

1 Q. Okay. And the way this is set up, we're
 2 talking about improvements to the platform that
 3 would have been applicable to both Great -- both
 4 Great Plains and Plain Green would have had the
 5 benefit of these -- of these improvements; am I
 6 right?
 7 A. You know how the underwriting changes are
 8 proposed to the tribes and they accept them. I
 9 think I -- I assume that's been discussed before.
 10 So just to be -- I mean, I'm sure you know this, but
 11 as we developed the improvements that we think could
 12 benefit the portfolios, we put together a
 13 presentation that goes to the lender, whether it's a
 14 bank lender or tribal lender. They review it, and
 15 they ultimately sign off on implementing them.
 16 Typically, there's a period of time where
 17 the champion challenger, where you test the new
 18 versus the old and make sure it's working better,
 19 and then based on approval from the lender, again,
 20 tribal/bank, that's then flipped as the champion
 21 for -- for the product.
 22 Q. Okay.
 23 A. So I -- it's probably clear to you. I just
 24 wanted to make sure that it didn't appear as if we
 25 can just roll out new underwriting rules without

<p style="text-align: right;">Page 301</p> <p>1 partnering with -- with the lenders.</p> <p>2 Q. No, I understand that --</p> <p>3 A. Okay. Thank you.</p> <p>4 Q. -- you would have -- you know, that the</p> <p>5 team would come up with changes, and before the</p> <p>6 changes would be implemented, you would -- you would</p> <p>7 have to get an approval from the particular tribe.</p> <p>8 Right?</p> <p>9 A. Yes.</p> <p>10 MR. SCHEFF: Object to the form. He's</p> <p>11 answered the question.</p> <p>12 BY MR. ACKELSBURG:</p> <p>13 Q. So let's move to the regulatory section.</p> <p>14 "At the Online Lenders Alliance meeting last week</p> <p>15 the speakers seemed in complete agreement that the</p> <p>16 regulatory situation had improved for the industry.</p> <p>17 The impact of the Republicans to block CFPB</p> <p>18 nominations, in particular, appears to bode well for</p> <p>19 the industry as a whole."</p> <p>20 That -- because that, I take it, relates</p> <p>21 to the -- to the concerns that the CFPB might look</p> <p>22 more closely at the -- at the short-term lending; is</p> <p>23 that the --</p> <p>24 MR. SCHEFF: Object to the form.</p> <p>25 BY MR. ACKELSBURG:</p>	<p style="text-align: right;">Page 303</p> <p>1 (Exhibit No. 286 marked.)</p> <p>2 A. (Reviews document.)</p> <p>3 Okay. I think I've got it.</p> <p>4 BY MR. ACKELSBURG:</p> <p>5 Q. Turn to page 2. Again, we're at the Great</p> <p>6 Plains Lending and Plain Green discussion. There is</p> <p>7 a -- there's a discussion about APRs. Do you see</p> <p>8 that?</p> <p>9 A. Yes.</p> <p>10 Q. Okay. So it says -- now, one of the -- one</p> <p>11 of the characteristics of these products -- and I</p> <p>12 think it's one of the characteristics that you're</p> <p>13 most proud of -- is that the longer -- that a repeat</p> <p>14 customer gets a lower APR. Right?</p> <p>15 A. Right.</p> <p>16 Q. And it sounds -- so but the problem is as</p> <p>17 the APR goes down, revenue goes down, right?</p> <p>18 A. Yes.</p> <p>19 MR. SCHEFF: Object to the form.</p> <p>20 BY MR. ACKELSBURG:</p> <p>21 Q. And so it sounds like that what -- I don't</p> <p>22 know whether this would be the product team or --</p> <p>23 somebody is trying to find that sweet spot where you</p> <p>24 can give the customer a break but maybe not so much</p> <p>25 a break that we lose off on revenues. Did I -- did</p>
<p style="text-align: right;">Page 302</p> <p>1 Q. I mean,, what about the CP- -- why would --</p> <p>2 why would Republicans blocking the CFPB nominations</p> <p>3 be a good thing for the industry?</p> <p>4 A. Well, at the time, it wasn't exactly clear</p> <p>5 how the CFPB was going to be focusing their time, so</p> <p>6 there was certainly a concern. I'm a Democrat. I</p> <p>7 think that's probably known. But the concern was</p> <p>8 that some of the people that were the early staffers</p> <p>9 for the CFPB were -- that the view was that they</p> <p>10 were anti-credit, and there was concern that the</p> <p>11 CFPB would not be a balanced regulatory agency like</p> <p>12 an FTC but more of an advocacy agency that wouldn't</p> <p>13 be fair and balanced. That was the concern at the</p> <p>14 time.</p> <p>15 Q. Okay.</p> <p>16 A. And there was some -- some rationale for</p> <p>17 why that was a concern.</p> <p>18 MR. ACKELSBURG: All right. Let's --</p> <p>19 let's go to the report, December 14th, 2011. Here's</p> <p>20 a stick for you.</p> <p>21 THE WITNESS: Oh, thank you.</p> <p>22 MR. ACKELSBURG: We're marking TF-PA</p> <p>23 705357 as Plaintiff's Exhibit -- what number do you</p> <p>24 have there?</p> <p>25 A. 286.</p>	<p style="text-align: right;">Page 304</p> <p>1 I just sort of summarize it more or less accurately?</p> <p>2 A. I think very much the way we thought about</p> <p>3 it, that the challenge with the products, as we were</p> <p>4 launching them, is we were -- we made guesses about</p> <p>5 what the default rates, how they would reduce over</p> <p>6 time, and made guesses as to what the APR ought to</p> <p>7 be appropriate to the customer's sort of default</p> <p>8 rates going down. Maybe I should take a second to</p> <p>9 explain that.</p> <p>10 What we had found in the past is with a</p> <p>11 customer, with each progressive payment that we got</p> <p>12 from a customer, the chance of the default went down</p> <p>13 and then sort of flat lined at some point over time.</p> <p>14 So the -- the APR reductions that were initially</p> <p>15 launched but that were predicated on a -- on an</p> <p>16 understanding of what we thought that would be,</p> <p>17 and -- and it was turning out that that wasn't quite</p> <p>18 exactly the way we thought. And so there was a</p> <p>19 discussion of how do we tune that APR reduction</p> <p>20 strategy so it more clearly aligned with the</p> <p>21 reduction default rates over time. Hopefully that</p> <p>22 makes sense.</p> <p>23 Q. Sure. I want to leave the -- the board</p> <p>24 memos for a moment. We may -- we may come back to</p> <p>25 them. But I'm conscious of the time, and I want to</p>

1 just have you look at a couple of other documents.
 2 MR. ACKELSBURG: 287.
 3 (Exhibit No. 287 marked.)
 4 A. And we're -- we're done with these?
 5 BY MR. ACKELSBURG:
 6 Q. Well, for the -- just leave it right there.
 7 We may -- we may come back.
 8 A. Thank you.
 9 (Reviews document.)
 10 There's no intermediary e-mail from --
 11 because it looks like I'm responding to myself,
 12 which seems odd, but -- you're not aware of
 13 anything?
 14 Q. Well, let --
 15 MR. SCHEFF: No, I think you've
 16 misread it.
 17 THE WITNESS: Oh, thank you. Thank
 18 you. I saw my name up top. Okay. That's from
 19 Michelle saying "Exact same items." Okay. Thank
 20 you.
 21 A. Okay. I've got it.
 22 BY MR. ACKELSBURG:
 23 Q. You've got it. Okay.
 24 So my question to you is, do you remember
 25 talking -- now, when we say "Chairman Shotton,"

1 we're talking about the chairman of the
 2 Otoe-Missouria tribe, correct?
 3 A. Yes.
 4 Q. Do you remember Chairman Shotton at this --
 5 in this time period -- well, first let me -- let me
 6 go back a minute and say, this is August of 2013.
 7 This is sort of when the ACH crisis was in full
 8 bloom; am I right?
 9 MR. SCHEFF: Object to the form and
 10 the terminology.
 11 You can answer the question.
 12 A. The company was, as the industry as a
 13 whole, was struggling for access to ACH providers
 14 during this time.
 15 BY MR. ACKELSBURG:
 16 Q. Okay. And as a result, you had been
 17 instructed by Victory Park to shut down new
 18 customers, right? Do you remember that?
 19 MR. SHAPIRO: Objection to form;
 20 misstating the record.
 21 BY MR. ACKELSBURG:
 22 Q. You do remember that, don't you?
 23 MR. SHAPIRO: Same objection.
 24 Read that question back, please, if you
 25 would, Ms. Reporter. I want the witness to hear it.

1 COURT REPORTER: "And as a result, you
 2 had been instructed by Victory Park to shut down new
 3 customers, right? Do you remember that?"
 4 A. There were certainly discussions with
 5 Victory Park Capital about whether they would
 6 purchase participations if there were lingering
 7 concerns about the ability to gain access to -- to
 8 ACHs. I can't remember if they ultimately told the
 9 tribe they were going to stop making purchases. I
 10 think they continued to make at least some purchase
 11 of loan participations, but I don't remember the
 12 specific details. Is that close enough?
 13 BY MR. ACKELSBURG:
 14 Q. Well, if they were going to stop purchasing
 15 participations, that communication would have been
 16 between Victory Park and Think Finance; am I right?
 17 MR. SHAPIRO: Objection to form.
 18 MR. SCHEFF: Object to the form; calls
 19 for a conclusion that's not supported by the record.
 20 THE WITNESS: Should I respond?
 21 MR. SCHEFF: You can answer the
 22 question, yes, of course.
 23 A. I mean, their primary requirement was to
 24 notify the tribe of that.
 25 BY MR. ACKELSBURG:

1 Q. How would they do that?
 2 A. They could do it by communicating with the
 3 tribe.
 4 Q. Or by communicating with Think Finance?
 5 A. Yes, they could have communicated with us.
 6 Q. Because you were the -- you were the
 7 administrative agent for GPLS, and you were,
 8 basically, managing all of the cash flows, right,
 9 through -- through your finance department?
 10 MR. SCHEFF: Object to the form; non
 11 sequitur with respect to the question.
 12 A. You can -- I mean,, Chris Lutes, I'm sure,
 13 will give you a better sense of the cash flows
 14 between the various entities and -- and how that
 15 operated. But Victory Park Capital could have
 16 notified us or could have notified the tribe
 17 correctly.
 18 BY MR. ACKELSBURG:
 19 Q. Okay. So at -- and so just to -- I'm just
 20 trying to provide context for this e-mail. So,
 21 presumably, the Otoe-Missouria would have been
 22 informed by either Victory Park or by -- by Think
 23 Finance that -- that new customers are -- that with
 24 regard to -- to future purchase of loan
 25 participations, Victory Park was basically saying

<p style="text-align: right;">Page 309</p> <p>1 we're not going to purchase participations for new 2 customers at this -- 3 A. I don't -- 4 MR. SCHEFF: Just wait until he 5 finishes his question. 6 BY MR. ACKELSBURG: 7 Q. -- at this point in time? 8 A. I don't remember that. This speaks to a 9 volume reduction -- 10 Q. Okay. 11 A. -- due to concerns about ACH. And, like I 12 said, I can't speak to exactly what the decisions 13 were, but I do remember the concern about ACH, and I 14 do remember a concern about whether the portfolio 15 should continue to grow while there -- this -- this 16 concern was in place. 17 Q. All right. So -- and thank you for the 18 correction. 19 And is it your recollection that maybe 20 earlier in August it was them slowing down the 21 volume, but at some point, there -- there was a 22 shutdown of new customers? 23 MR. SHAPIRO: Objection to form. 24 MR. SCHEFF: Object to the form. 25 BY MR. ACKELSBURG:</p>	<p style="text-align: right;">Page 311</p> <p>1 was happening here. Whether that was the chairman 2 having that concern or whether that was just Mark 3 Curry having that concern, I -- I can't speak to it. 4 Q. Well, I -- all right. Putting aside 5 whether your conversations were with the chairman or 6 with Mark Curry, you do remember that the 7 Otoe-Missouria expressing their concern that Think 8 Finance was redirecting customers to the RISE 9 product rather than the tribal product? 10 MR. SCHEFF: Objection; asked and 11 answered. 12 You can answer it again. 13 A. Yeah, I don't remember the Otoe-Missouria 14 raising this. I remember Mark Curry and his team 15 raising this as a concern but -- in fact, I don't 16 know that I communicated directly with -- with 17 Chairman Shotten. I imagine that would have been 18 the relationship management team. But I -- I 19 always -- I thought we had -- and by "we," I really 20 mean the relationship management team had a terrific 21 relationship with Chairman Shotten and the team on 22 the ground. Mark Curry was not always such a great 23 relationship. 24 BY MR. ACKELSBURG: 25 Q. Why is that?</p>
<p style="text-align: right;">Page 310</p> <p>1 Q. Am I right? 2 MR. SHAPIRO: Wait. Wait a minute. 3 Who's "them" in that question? 4 BY MR. ACKELSBURG: 5 Q. At some point, Great Plains Lending, Plain 6 Green and Mobiloans stopped making loans to new 7 customers; am I right? 8 A. I don't remember that there was a complete 9 cessation of new customer originations at any point 10 in time. That might have been the case, but I 11 thought there was always at least some limited 12 provision of credit to new customers. I'm sure it 13 was -- the volumes I remember at -- at least one 14 point in time were -- were constrained due to this 15 concern about the ACH. But I don't think it was 16 ever stopped, and I -- but I don't remember the 17 details, but that's -- that's my memory. 18 Q. And do you remember discussing during this 19 time period when volumes at least were slowing down, 20 the tribe's concern that you were pushing business 21 to RISE, you were redirecting new customers to RISE? 22 Do you remember that coming up in the conversation 23 with the Otoe-Missouria? 24 A. I actually don't remember that. I mean,, 25 it's -- clearly, that was -- that was something that</p>	<p style="text-align: right;">Page 312</p> <p>1 A. Mark is a difficult and demanding business 2 person, and, you know, this, I think, is an example 3 of that. He's raising an issue that was just not 4 true based on speculation and sort of a contrary 5 personality. And I -- I don't think I'm overstating 6 that. He's -- you know, he's a very successful 7 business person, but he, in this case, thought that 8 there was something duplicitous going on that just 9 wasn't in any way correct. 10 Q. Okay. But it was true that there was -- at 11 the same time that you were pulling back, that -- 12 that the tribal products were pulling back with 13 regard to new customers, that you were expanding the 14 RISE product? 15 MR. SCHEFF: Object to the form. 16 You can answer. 17 BY MR. ACKELSBURG: 18 Q. Those two things were happening at the same 19 time; am I right? 20 A. Yes, we were continuing to -- to grow RISE 21 because that was something in our control as opposed 22 to something that -- you know, that Victory Park 23 Capital was suggesting that they had -- had -- you 24 know, that they were questioning the concerns about 25 the ACH issue. But what he was saying was we're</p>

<p style="text-align: right;">Page 313</p> <p>1 redirecting customers to RISE, which is absolutely 2 not true. 3 Q. Okay. So -- but you did mention -- 4 A. I mean, -- I'm sorry, just to -- that's 5 what he was frustrated about, is not that RISE was 6 growing, but he thought we were taking customers 7 that should have rightfully been the tribes and 8 redirecting them. He was just wrong about that. 9 Q. So you mentioned that the relations with 10 Mark Curry on the Great Plains Lending side were a 11 little strained at times. How were the relations 12 with the Tunica-Biloxi? 13 MR. SCHEFF: Object to the form; 14 misstates the testimony. 15 You can answer the question. 16 A. The Tunica-Biloxi, I mean,, each -- each of 17 the tribal partners had -- you know, they were 18 different to deal with. There were certain benefits 19 of working with the Tunica-Biloxi. In particular, 20 their chairman at the time -- actually, a really 21 interesting guy and -- and interested in really 22 pushing us to drive down the rates, which I found 23 very refreshing. I think he was very much a 24 consumer advocate. So there was a lot of positives 25 with working with him. We liked the product. But</p>	<p style="text-align: right;">Page 315</p> <p>1 risk in the program to the tribe and that she didn't 2 think the lending program made sense for the tribe. 3 The other members of the council were supportive, 4 but it led to, on occasion, you know, challenging 5 interactions because she was very negative to the 6 program and vocal on that. 7 MR. ACKELSBURG: Let's look at another 8 exhibit. 9 MR. SCHEFF: Irv, after this document, 10 let's take a little break. We have been going for a 11 little more than an hour. 12 MR. ACKELSBURG: Okay. This is 288. 13 (Exhibit No. 288 marked.) 14 A. (Reviews document.) 15 Yes. 16 BY MR. ACKELSBURG: 17 Q. So your -- I'm not sure who you're -- 18 you're interacting with Michelle Curtis at RLJ 19 Companies. Do you see that? 20 A. She's Bob Johnson's assistant. 21 Q. Okay. Now, at this point -- I think at 22 this point Think Finance already acquired RJL. Am I 23 right? 24 A. No. RJL (sic) was a separate entity. RJL, 25 actually, was the -- RJL is the holding company of</p>
<p style="text-align: right;">Page 314</p> <p>1 the -- the council, as far as I could tell, did have 2 some concerns, and so it made our interactions with 3 the tribal council sometimes -- you know, there was 4 some conflicts there. 5 BY MR. ACKELSBURG: 6 Q. So just to be -- to be clear, so -- and I 7 want to just get the personalities straight. 8 A. Yeah. 9 Q. So the Mobiloans had some staff, had -- had 10 executives. One of them was, I think, someone named 11 Kim Palermo. Do you remember Kim? 12 A. I vaguely remember Kim. I remember the 13 name. I don't know if I met her. 14 Q. But the tribal council would have been 15 Marshall? Is that -- I'm just trying to understand 16 where the problems were. 17 A. Yeah, so -- of the people we met with, we 18 had very good relationships, but there was one 19 member, her name was Brenda. I don't remember what 20 her last name is, but she was -- she was difficult 21 to deal with. 22 Q. Did she think that -- was she expressing 23 concerns that the tribe was not being treated fairly 24 by Think Finance? 25 A. She said that she thought that there was</p>	<p style="text-align: right;">Page 316</p> <p>1 Bob Johnson's various investments. We bought one of 2 his investment companies. I think what's became 3 MySalaryLine. I may not be getting that exactly 4 right. But Bob Johnson still had RLJ Companies. I 5 think he still does. And Michelle was the person 6 who would take -- he doesn't read his own e-mails, 7 so she would take the e-mails and print them out and 8 hand them to him. 9 Q. Okay. And -- and Bob Johnson was the one 10 that had originally connected Think Finance to the 11 Tunica-Biloxi; am I right? 12 A. Yeah, I don't remember how he had a 13 relationship with them, but he -- he did have some 14 sort of a relationship and thought that they might 15 be a good -- good partner for the program. 16 Q. Okay. And so you're saying to Michelle, 17 this is September 26, 2013, "We are near the point 18 of terminating our relationship with Tunica-Biloxi. 19 They've been extremely difficult to work with." Do 20 you see that? "If we don't complete the deal, it 21 will not be the worst thing in the world." Do you 22 see that? 23 MR. SCHEFF: Why don't you finish 24 reading the rest of the e-mail so he has got the 25 whole thing, Irv?</p>

1 BY MR. ACKELSBURG:
 2 Q. Do you see that?
 3 A. And as it says, "We are working in good
 4 faith, but they are requesting acceptable changes."
 5 Q. What kind of changes were they asking?
 6 A. I actually don't remember what it was. I
 7 don't know if it was financial deal terms or
 8 structural deal terms.
 9 Q. And you do remember, though, that there was
 10 some strained relationships with -- as you said --
 11 A. As I mentioned, yes.
 12 Q. -- with the tribe, with the Tunica-Biloxi?
 13 A. Yeah.
 14 Q. Okay. And what about --
 15 MR. SCHEFF: Let's take --
 16 MR. ACKELSBURG: Can I just do one
 17 more, please, real quick?
 18 MR. SCHEFF: One more what?
 19 MR. ACKELSBURG: One more exhibit and
 20 then --
 21 MR. SCHEFF: No. Let's take a break.
 22 We've been going more than an hour. It's late in
 23 the day.
 24 MR. ACKELSBURG: Okay.
 25 THE VIDEOGRAPHER: We are off the

1 record. The time is 5:01 p m.
 2 (Break taken, 5:01 p m. to 5:13 p m.)
 3 (Exhibit No. 289 marked.)
 4 THE VIDEOGRAPHER: We are back on the
 5 record. The time is 5:13 p m.
 6 BY MR. ACKELSBURG:
 7 Q. So before we get to the document -- this is
 8 289.
 9 A. 289.
 10 Q. Before we get to the document, just -- we
 11 haven't talked about Plain Green and how the
 12 relations were with Plain Green, better or -- I
 13 mean,, so --
 14 A. You know, each -- each had their -- their
 15 pros and cons. I don't know that I can say better
 16 or worse. At different periods of time --
 17 Q. Was it a difficult relation --
 18 A. -- one was more strained than other ones.
 19 Q. -- or was it a strained relation? A good
 20 relation?
 21 A. I would say, generally speaking, it was a
 22 very good -- good relationship. I mean,,
 23 ultimately, it ended up eroding to a point where
 24 they terminated the relationship and -- and did
 25 their own loan program. And, you know, that was

1 something that they had -- they had the right to do.
 2 But while I was interacting with them, I always
 3 thought that they were very, very appreciative of
 4 the economic benefit that the program had to
 5 their -- to their tribe.
 6 Q. Do you know what happened? I mean,, what
 7 were the -- what was the deal breakers? What -- why
 8 did -- what triggered the separation?
 9 A. I really don't know. That was really -- my
 10 recollection is that was after I had exited even the
 11 board of -- of Think Finance at that time. I was --
 12 I was aware that this had happened and disappointed,
 13 but I don't remember the specifics.
 14 Q. You never heard any backstory about what --
 15 why it fell apart?
 16 A. I mean,, it was thirdhand. So I -- that's
 17 why I didn't -- I said I don't know the specifics.
 18 I had heard that the bank -- or, excuse me -- that
 19 the tribe wanted a greater share of the economics
 20 coming out of the business, and I had also heard
 21 that there was ongoing negotiations to make that
 22 happen. I don't know exactly what led to the
 23 termination of that relationship because it did seem
 24 like it was based on a pretty good foundation.
 25 Q. Have you also heard that some former

1 employees of Think Finance are now working for Plain
 2 Green?
 3 A. Yes.
 4 Q. And who are the ones you heard are there?
 5 A. I think the person in treasury that we
 6 mentioned, Badr, I believe.
 7 Q. B-a-d-r, Badr?
 8 A. Yeah. I think it's pronounced "butter" for
 9 some reason.
 10 And I think more recently one of the --
 11 another people -- a person in finance.
 12 Q. Linda Callnin?
 13 A. Linda Callnin. It was one of the Lindas.
 14 Q. L1.
 15 A. L1. L1 had joined them. I don't know of
 16 anyone else. There may be others, though.
 17 Q. Where's Michelle Nguyen these days?
 18 A. Michelle Nguyen is working for another
 19 online lender.
 20 Q. Which one?
 21 A. I think they go by the name of either RSVF
 22 or VIP. I don't know much about them. It was
 23 just -- it was set up by a former employee of the
 24 company.
 25 Q. Which employee?

1 A. A guy named Kevin Dahlstrom.
 2 Q. He was your marketing guy, wasn't he?
 3 A. He was the chief marketing officer,
 4 correct.
 5 Q. And is that product live?
 6 A. I think it is. I literally don't know
 7 anything about the size of the portfolio, what the
 8 products are, but I believe that it is live.
 9 Q. Do you -- do you know the label name, the
 10 website name?
 11 A. I don't.
 12 Q. And so Kevin sort of set up a company doing
 13 what Think Finance used to do, providing services to
 14 tribal lenders?
 15 A. I really don't know whether he's a direct
 16 lender or licenses technology in some point, whether
 17 they work with banks or tribes. I just don't know.
 18 Q. Is he based here in Fort Worth?
 19 A. I think that that operation is out of
 20 Dallas.
 21 Q. Do you know what tribe they're partnered
 22 with?
 23 A. I don't know that they're partnered with a
 24 tribe at all.
 25 Q. Well, who's the lender? Do you know?

1 A. They may be a direct lender. Actually, if
 2 I had to -- you know, my understanding, because I
 3 really haven't asked, I mean,, I -- it's -- well, I
 4 just haven't asked. So my thought, they were a
 5 direct lender, rightly or wrongly.
 6 Q. Okay. So if we go to the exhibit, maybe
 7 you can just explain to us what's going on here.
 8 MR. SCHEFF: I'm sorry, is there a --
 9 explain what's going on?
 10 All right. To the extent that you can
 11 answer that question, go ahead.
 12 A. I would be glad to.
 13 So this is actually something that as we
 14 were, you know, watching the tribal programs evolve
 15 and grow, one of the challenges was getting
 16 employment on the reservation to support those --
 17 those tribes. And we thought it made more sense,
 18 and certainly supported what the reservation was
 19 trying to do, to have the employment for the tribal
 20 lending businesses be tribal members. It wasn't a
 21 requirement.
 22 They could have hired outsiders. And,
 23 obviously, as you mentioned, Plain Green did for
 24 their program because there weren't tribal members
 25 to support the tribal program. But we thought it

1 only made sense as sort of part of what we thought
 2 we were doing with tribes. I mean,, I have to say,
 3 it was part of what we had some pride in was
 4 providing economic benefits to the tribe.
 5 So what we saw, as when we were providing
 6 just in skills training, it wasn't enough. We were
 7 seeing a lot of turnover in basic stuff, like,
 8 showing up to work for time -- you know, on time.
 9 There was a, you know, just basic sort of more --
 10 you know, how you -- it's almost mindset training,
 11 if you will, how to think about a job and how to
 12 interact with that job was what was hard.
 13 So it -- I recognize in saying it needs to
 14 be more like a prison program or programs for
 15 addicts sounds terrible. What I was trying to get
 16 at is the training we provide and the training we
 17 support needs to be more than just the skills of the
 18 job. It needs to be more broad-based, how to be an
 19 effective member of the workforce and how to
 20 contribute to the growth of the business. And we
 21 hoped that would be above and beyond what happened
 22 specifically with this program.
 23 BY MR. ACKELSBURG:
 24 Q. And you were talking mainly about -- about
 25 the call center employees, right?

1 A. Mainly about the call center, but it would
 2 have been anybody. We, actually, at one point in
 3 time were -- as actually it mentions here, we had an
 4 idea that, you know, we could provide sort of a
 5 program through the local college that anybody in
 6 the reservation could use, and whether they were
 7 ultimately hired by the tribe or just used those
 8 skills to find other work or do other things on or
 9 off the reservation, that was sort of part of our
 10 what we think -- thought was our commitment to, you
 11 know, the tribal partners that we worked with.
 12 Q. But you discovered that was sort of more
 13 challenging than you thought at conception?
 14 A. Yeah, I mean, it's just a lot of work to
 15 set that up. And so we did expand -- and I don't --
 16 I mean, this was something that was primarily around
 17 the jobs that the -- that the tribal lender had
 18 established for customer support. I think there
 19 were some -- you know, there was some accounting, I
 20 think.
 21 I can't speak to the full suite of jobs
 22 that they -- that they had as part of the managing
 23 the program, but there was, you know, definitely the
 24 skills program that was managed by our training
 25 staff that worked with third parties and helped

<p style="text-align: right;">Page 325</p> <p>1 bring them up to speed but also this idea of what 2 more can we do. 3 Q. Now, I just want to switch topics for a 4 second. I've noticed in some of the discovery 5 documents some tension between listing the tribal 6 products as Think Finance products or they're not 7 our products or they are our products. Do you 8 remember that -- that -- you're nodding your head, 9 so I think you -- you remember those sort of issues 10 being discussed within the company? 11 A. Yeah. 12 MR. ACKELSBURG: I just want to show 13 you a document along that line. 14 (Exhibit Nos. 290 & 291 marked.) 15 BY MR. ACKELSBURG: 16 Q. So there's 290, and here's 291. 17 MR. SCHEFF: Is this attached to 18 anything? This is not even -- 19 MR. ACKELSBURG: No, this is -- this 20 is from the complaint. 21 MR. SCHEFF: Okay. Thank you. 22 A. So this is the LinkedIn page for Think 23 Finance. 24 MR. ACKELSBURG: That we attached to 25 the -- this was attached to the --</p>	<p style="text-align: right;">Page 327</p> <p>1 when we went public, we still had to do a lot of 2 sort of, in my mind, excessive explaining about when 3 we refer to our products, our products that -- that 4 utilize our technology platform, some that we are 5 the direct originator of and some that there is a -- 6 in the case of the -- of the filings, there is a 7 third-party bank that originates. So it's just sort 8 of complicated to explain it. 9 From, you know, the internal point of 10 view, you know, we were all on the same -- you know, 11 we're -- we're doing what we can to help our 12 partners be successful, and we feel a lot of pride 13 in the way the products are serving customers. And 14 I think we all think of them, you know, as -- as, 15 you know, the stuff we are committed to being 16 successful with. 17 But it's -- that has been the challenge, 18 as how to communicate in a crisp way the products 19 that are supported by the platform without being 20 misleading, as in this case, where the reporter 21 thought we actually operated the -- the product 22 Plain Green. 23 Q. Well, you did operate it, didn't you? 24 MR. SCHEFF: Object to the form. 25 MR. SHELDON: Object to form.</p>
<p style="text-align: right;">Page 326</p> <p>1 MR. SCHEFF: I understand. I see it. 2 Thank you. 3 MR. ACKELSBURG: -- to the complaint 4 in this action. 5 A. (Reviews document.) 6 Yes. 7 MR. SHELDON: Just one second. 8 MR. ACKELSBURG: Sure. 9 MR. SHELDON: It's two exhibits. I 10 would like to read them first, please. 11 Thank you. 12 BY MR. ACKELSBURG: 13 Q. So early on in the -- with the tribal 14 products, there were -- there were times when Think 15 would refer to the tribal products as Think Finance 16 products, agreed? 17 MR. SCHEFF: Object to the form. 18 A. Yes. 19 BY MR. ACKELSBURG: 20 Q. Okay. And then over time, the -- it 21 appears that there was a discipline sort of 22 developed within the -- in the company to stop doing 23 that; would that be fair? 24 A. Well, there was a lot of confusion that 25 still lingers. I'm sure you've read the S1 filing</p>	<p style="text-align: right;">Page 328</p> <p>1 BY MR. ACKELSBURG: 2 Q. I'm not saying that you -- you were the 3 lender, but don't you agree, that in -- I mean, what 4 do you mean -- what do you mean that you didn't 5 operate the program? 6 MR. SCHEFF: Object to the form. 7 A. Well, actually, I mean, -- 8 BY MR. ACKELSBURG: 9 Q. What do you -- what do you mean? 10 A. So, I mean, for instance, there was -- 11 there was none of customer support staff. It wasn't 12 our collection staff. We were providing key 13 components of it, but that's very different from 14 operating all the decisions on, you know, the 15 marketing, the -- the underwriting, the -- the way 16 that the policies and procedures were followed was 17 ultimately what the tribal lenders were doing. So I 18 think the term "we were operating Plain Green" would 19 have been misleading and -- and inaccurate. 20 Q. Okay. One of the things that you did as -- 21 as CEO was to take responsibility for some of the 22 external messaging; am I right? 23 A. Yes. 24 Q. I mean, we looked, for example, at -- 25 there was one board memo that we saw where you had</p>

<p style="text-align: right;">Page 329</p> <p>1 an op-ed, and it was an op-ed in Fox Business</p> <p>2 something-or-another --</p> <p>3 A. Yes.</p> <p>4 Q. -- and you shared with the board. And</p> <p>5 so -- right? You remember that?</p> <p>6 A. Yes.</p> <p>7 Q. Okay. And so would you agree that you were</p> <p>8 periodically either scoping out potential op-eds</p> <p>9 or -- or constructing sort of message -- messaging</p> <p>10 statements for the company with regard to the tribal</p> <p>11 lending business?</p> <p>12 MR. SCHEFF: Object to the form.</p> <p>13 You can answer the question.</p> <p>14 A. I mean,, yes, to the business of -- of</p> <p>15 Elevate, as a whole.</p> <p>16 MR. SCHEFF: Not as to Elevate. We're</p> <p>17 talking about Think Finance.</p> <p>18 THE WITNESS: Oh, gosh. Thank you.</p> <p>19 BY MR. ACKELSBURG:</p> <p>20 Q. That's all right. I knew you meant Think</p> <p>21 Finance.</p> <p>22 A. So to your -- to your question, yes, I was</p> <p>23 thinking about op-eds really in a broad set of, you</p> <p>24 know, topics related to the business of Think</p> <p>25 Finance.</p>	<p style="text-align: right;">Page 331</p> <p>1 Last page. Okay. Thank you.</p> <p>2 Q. So this document, which you entitled</p> <p>3 "Tribal Lending Holding Statement" --</p> <p>4 A. I know the metadata says that -- that I</p> <p>5 originated it. I actually don't remember that I</p> <p>6 originate- -- I may have edited it or it may have</p> <p>7 been provided to me with -- you know, it may have</p> <p>8 started with something that I wrote and kept the --</p> <p>9 you know, my meta tag on it. I, sort of generally</p> <p>10 speaking, remember when documents like this were</p> <p>11 created. But just for the record, I don't know that</p> <p>12 I created this in whole cloth.</p> <p>13 Q. Okay. And I appreciate that. I mean,, but</p> <p>14 you -- you were involved in some fashion with</p> <p>15 constructing this document or documents like it?</p> <p>16 A. Yes.</p> <p>17 MR. SCHEFF: Object to the form.</p> <p>18 BY MR. ACKELSBURG:</p> <p>19 Q. Okay. So you see, for example, in No. 3,</p> <p>20 it looks like you were -- you or the group that was</p> <p>21 working on this document anticipated some ambiguity</p> <p>22 about whose product these labels were, right --</p> <p>23 MR. SCHEFF: Object to the form.</p> <p>24 BY MR. ACKELSBURG:</p> <p>25 Q. -- along the lines that we were just</p>
<p style="text-align: right;">Page 330</p> <p>1 MR. ACKELSBURG: All right. So I am</p> <p>2 going to show you a document, P-293.</p> <p>3 MR. SCHEFF: P-292.</p> <p>4 MR. ACKELSBURG: Oh, you're right.</p> <p>5 (Exhibit No. 292 marked.)</p> <p>6 MR. ACKELSBURG: For the record, I</p> <p>7 believe this is a stand-alone document. The</p> <p>8 metadata says that the author is Ken Rees,</p> <p>9 custodian, Ken Rees, and assigns a date of</p> <p>10 January 23, 2012, to this document.</p> <p>11 A. (Reviews document.)</p> <p>12 I'm sorry, is there -- there's no date on</p> <p>13 this?</p> <p>14 BY MR. ACKELSBURG:</p> <p>15 Q. Yeah, I'm sorry, I said it before.</p> <p>16 A. Can you tell me that?</p> <p>17 Q. Sure.</p> <p>18 A. Okay.</p> <p>19 Q. So there's no date, obviously, on the</p> <p>20 document. What the metadata --</p> <p>21 A. The metadata suggests.</p> <p>22 Q. -- states a date created of January 23,</p> <p>23 2012.</p> <p>24 A. '12. Thank you.</p> <p>25 (Reviews document.)</p>	<p style="text-align: right;">Page 332</p> <p>1 talking about?</p> <p>2 MR. SCHEFF: Object to the form.</p> <p>3 You can answer the question.</p> <p>4 A. I'm sorry.</p> <p>5 BY MR. ACKELSBURG:</p> <p>6 Q. It looks like you anticipated some</p> <p>7 confusion in the external world with regard to</p> <p>8 whether these were Think Finance products or tribal</p> <p>9 products or -- right?</p> <p>10 A. Right.</p> <p>11 Q. And that's what --</p> <p>12 MR. SCHEFF: Object to the form.</p> <p>13 BY MR. ACKELSBURG:</p> <p>14 Q. And so what you're doing here is you or the</p> <p>15 group that is working on this is trying to formulate</p> <p>16 a way of talking about that?</p> <p>17 A. Yes.</p> <p>18 Q. Yeah?</p> <p>19 A. Yes.</p> <p>20 Q. Okay. And then No. 4, the question -- and</p> <p>21 these are questions, essentially, you're asking</p> <p>22 yourself. And by "you," I mean,, you and maybe the</p> <p>23 group that was working on this or --</p> <p>24 A. So if you --</p> <p>25 MR. SCHEFF: Hold on. Can you -- let</p>

1 him ask the question. He hasn't asked a question.
 2 BY MR. ACKELSBURG:
 3 Q. You can clarify if you need some --
 4 MR. SCHEFF: Well, there's nothing to
 5 clarify. You need to ask a question.
 6 BY MR. ACKELSBURG:
 7 Q. If you need -- if you need to clarify a
 8 previous answer -- as I told you in the beginning, I
 9 want you to give you the opportunity to do that, and
 10 I think you are trying to do that before your lawyer
 11 interrupted you. So I'll give you the chance to do
 12 that now.
 13 MR. SCHEFF: Were you trying to
 14 clarify, or -- or what were you doing?
 15 THE WITNESS: I was trying to clarify
 16 what this document was.
 17 MR. SCHEFF: Okay. Then go ahead.
 18 A. Because I don't know if it's clear what a
 19 holding statement is.
 20 BY MR. ACKELSBURG:
 21 Q. Okay. What is a holding statement?
 22 A. Our -- you know, it's sort of PR firms know
 23 that a -- there could get questions, and it could be
 24 an article, maybe it's a controversial article or
 25 just somebody that's trying to understand about the

1 business. And they like crisp answers so they're
 2 not trying to -- when a journalist is on deadline
 3 trying to communicate stuff that they don't really
 4 know how to communicate, so this was an -- I don't
 5 remember exactly this, but this and other things
 6 have been written and evolved over the years related
 7 to helping the PR team be able to sort of succinctly
 8 answer questions that come their way. So just --
 9 that may be clear already, but I wanted to specify
 10 what I think this document is for.
 11 Q. Well, look at -- if you look at -- let's
 12 look at No. 8, "Where does the money that the tribes
 13 lend come from?" And --
 14 A. Yes.
 15 Q. So I take it your -- that the response,
 16 that this one line responds to that?
 17 A. Yeah, it's not actually accurate, just for
 18 the -- for the record.
 19 Q. What's not accurate?
 20 A. Well, because, in general, the -- the
 21 lending -- where the money that the tribes lend
 22 comes from, there's also these participation
 23 agreements that help support the growth of the
 24 business.
 25 Q. Right. So this is somewhat of an

1 incomplete statement?
 2 A. Some -- some shorthand for purposes of
 3 journalists asking questions. That would have been
 4 for -- obviously, this wouldn't be used for legal
 5 inquiries, for instance.
 6 Q. Okay. And what about No. 9, "Who owns the
 7 loan and who assumes the credit risk, Think or
 8 tribal partner?" Your -- the answer it looks like
 9 you came up with or you and the PR people came up
 10 with was --
 11 MR. SCHEFF: Object to the form;
 12 misstates the testimony.
 13 A. As I -- as I said, I'm not -- I'm not sure
 14 if I wrote this. But, clearly, there was a vetting
 15 process that was going on that -- where the other
 16 executives looked at this and said they either
 17 agreed or disagreed. And I think Chris thought that
 18 there needed to be -- this needed to be enhanced. I
 19 don't know where it ended up.
 20 BY MR. ACKELSBURG:
 21 Q. Well, I mean, what Chris is essentially
 22 saying is that the answer that the group came up
 23 with isn't -- isn't true, right? Isn't that what
 24 he's saying?
 25 MR. SCHEFF: Object to the form; the

1 document speaks for itself. You had the opportunity
 2 to ask Mr. Lutes about what he meant, and you never
 3 did so. So don't ask him to do so.
 4 BY MR. ACKELSBURG:
 5 Q. So do you see where it says, "The tribes
 6 originate the loans and assume the credit risk for
 7 them"? And I think we talked earlier that the bulk
 8 of the credit risk is actually assumed by Think
 9 Finance through its guarantee supply to GPLS.
 10 Right?
 11 MR. SCHEFF: Object to the form.
 12 You can answer the question.
 13 A. So if you're asking my perception on this
 14 specific, I would say that the tribes originate the
 15 loans is correct. I would say that they assume the
 16 credit risk on the parts of the loans that are not
 17 participated out.
 18 BY MR. ACKELSBURG:
 19 Q. The 1 percent?
 20 A. And -- well, and, actually, just to be
 21 clear, on the loans that they originate that, for
 22 one reason or another, wouldn't be participated out,
 23 they would assume that in perpetuity. And then for
 24 any that are participated out, they would keep that,
 25 the, in the case of the early days, 1 percent. And

<p style="text-align: right;">Page 337</p> <p>1 I believe there was ongoing discussions that led to</p> <p>2 the expansion of the -- of the tribe's ownership</p> <p>3 levels.</p> <p>4 So this was -- I think the reason why the</p> <p>5 PR team probably originally wrote this is it is</p> <p>6 correct, per se, but not a full response. So I</p> <p>7 think that's why Chris raised it. I'm sorry, I'm</p> <p>8 speculating.</p> <p>9 Q. Number 14, it says --</p> <p>10 MR. SCHEFF: You're objecting to your</p> <p>11 own answer.</p> <p>12 BY MR. ACKELSBURG:</p> <p>13 Q. Number 14 --</p> <p>14 A. Yes.</p> <p>15 Q. -- it says, "Does Think Finance help with</p> <p>16 the collections process when customers default?"</p> <p>17 And you say, "Other than providing the" -- you or</p> <p>18 the authors answer that question, "Other than</p> <p>19 providing the technology platform that is used for</p> <p>20 collections, Think Finance does not provide</p> <p>21 collection services."</p> <p>22 Now, that's not entirely correct, is it?</p> <p>23 A. I would have said I thought it was correct.</p> <p>24 So I'm maybe missing a subtlety, but I thought this</p> <p>25 would be an accurate statement.</p>	<p style="text-align: right;">Page 339</p> <p>1 Finance does not provide collection services." I</p> <p>2 know that we were providing sort of monitoring and</p> <p>3 quality assurance or services to the tribe in sort</p> <p>4 of overseeing that collections, but I don't view</p> <p>5 that as collection services, per se. I think I view</p> <p>6 that as a quality.</p> <p>7 BY MR. ACKELSBURG:</p> <p>8 Q. So you were overseeing --</p> <p>9 MR. SCHEFF: Irv, you're at five</p> <p>10 minutes.</p> <p>11 BY MR. ACKELSBURG:</p> <p>12 Q. So you were overseeing and monitoring and</p> <p>13 assessing the collection services on behalf of the</p> <p>14 tribes --</p> <p>15 A. Just to respond to that --</p> <p>16 Q. -- but not doing --</p> <p>17 MR. SCHEFF: Hold on.</p> <p>18 BY MR. ACKELSBURG:</p> <p>19 Q. -- but not doing the collections -- but not</p> <p>20 doing the collections work directly yourself; that's</p> <p>21 what you're saying?</p> <p>22 A. I guess --</p> <p>23 MR. SCHEFF: Object to the form.</p> <p>24 You can answer the question.</p> <p>25 A. Unpack that a little bit because you used</p>
<p style="text-align: right;">Page 338</p> <p>1 Q. Well, do you remember Gio Rodriguez? Do</p> <p>2 you remember his work at monitoring the collections</p> <p>3 pro- -- you had -- there were -- there were all</p> <p>4 these outsourced? Do you remember the -- there</p> <p>5 was --</p> <p>6 MR. SCHEFF: What time frame,</p> <p>7 Mr. Ackelsberg? This is January '12.</p> <p>8 BY MR. ACKELSBURG:</p> <p>9 Q. So do you remember -- do you remember there</p> <p>10 was CMS and Buffalo? There was Yessio. There</p> <p>11 was -- there was K2 in Honduras. There was -- there</p> <p>12 was another outsource collection agency in -- in</p> <p>13 Mexico, and -- and there were Think Finance staff</p> <p>14 that were assigned to monitor the performance of all</p> <p>15 of these various collection call centers. Am I</p> <p>16 right?</p> <p>17 MR. SCHEFF: Object to the form.</p> <p>18 Unpack that however you choose to answer</p> <p>19 the question.</p> <p>20 THE WITNESS: Thank you.</p> <p>21 A. So you used a lot of names. I know some of</p> <p>22 those names. Gio Rodriguez, I don't know who that</p> <p>23 is. You know, the collections activities and all</p> <p>24 that was not something I was particularly close to.</p> <p>25 But I do think this is still an accurate, "Think</p>	<p style="text-align: right;">Page 340</p> <p>1 "overseeing." I think you had a few words. The</p> <p>2 overseeing, I wouldn't say that we were overseeing.</p> <p>3 I would say that we were providing monitoring</p> <p>4 services to the tribe, that they had the contract</p> <p>5 with the collections providers. And, you know,</p> <p>6 we -- we provided certainly advisory support to the</p> <p>7 tribes, but I guess the -- I wouldn't characterize</p> <p>8 it as our team was overseeing the collections</p> <p>9 activities.</p> <p>10 BY MR. ACKELSBURG:</p> <p>11 Q. Your team was overseeing the debt sales,</p> <p>12 though, weren't they?</p> <p>13 MR. SCHEFF: Object to the form.</p> <p>14 You can answer the question if you can.</p> <p>15 A. And, I'm sorry, this is not an area that I</p> <p>16 have a whole lot of specificity in. I thought there</p> <p>17 was a third party that was managing the debt sales</p> <p>18 for -- for all of the lending arms, including our</p> <p>19 direct lending arms.</p> <p>20 BY MR. ACKELSBURG:</p> <p>21 Q. You're talking about Brett Horrocks --</p> <p>22 A. Yes, I thought he --</p> <p>23 Q. -- SourceOne?</p> <p>24 A. -- was the one who was sort of determining</p> <p>25 all of the management of the debt sales.</p>

<p style="text-align: right;">Page 341</p> <p>1 Q. Didn't we just look at board reports where</p> <p>2 you were talking -- or kind of bragging about the</p> <p>3 automation of the debt sale process?</p> <p>4 MR. SCHEFF: Object to the form;</p> <p>5 mischaracterizes the document.</p> <p>6 You can answer the question if you can.</p> <p>7 A. I think actually what I was talking about</p> <p>8 was the fact that we put in place requirements that</p> <p>9 when the debt was sold, that it could be resold, and</p> <p>10 there was ongoing monitor- -- monitoring to ensure,</p> <p>11 you know, adherence to FDCPA and other customer</p> <p>12 support, you know, best practices.</p> <p>13 BY MR. ACKELSBURG:</p> <p>14 Q. All right. Let's --</p> <p>15 A. So I don't -- I don't remember talking</p> <p>16 about the automation of that.</p> <p>17 Q. Look at No. 15, "Some people say that</p> <p>18 payday lenders are essentially renting a tribe to</p> <p>19 escape state regulation. What is your response to</p> <p>20 that claim?" And do you see your response to that?</p> <p>21 A. Yes.</p> <p>22 Q. Might the revenue share be looked at by</p> <p>23 some as a rental payment to the tribe?</p> <p>24 MR. SCHEFF: Object to the form; calls</p> <p>25 for speculation. Who knows who these other people</p>	<p style="text-align: right;">Page 343</p> <p>1 a -- we know there was -- there was at some point</p> <p>2 customer service -- well, let me -- there was never</p> <p>3 a customer -- well, let's just say there were</p> <p>4 customer service seats with tribal -- with tribal</p> <p>5 members sitting in them at the three tribes,</p> <p>6 correct?</p> <p>7 A. Correct.</p> <p>8 Q. Okay. And, eventually, there were -- well,</p> <p>9 at various points there were tribal employees --</p> <p>10 employees of the -- of the tribal lending companies,</p> <p>11 right?</p> <p>12 A. Yes.</p> <p>13 Q. Okay. But the question seems to say where</p> <p>14 is all the activity related to the tribal products</p> <p>15 taking place, right? That's kind of what you're --</p> <p>16 MR. SCHEFF: Hold up.</p> <p>17 BY MR. ACKELSBURG:</p> <p>18 Q. Do you see that?</p> <p>19 MR. SCHEFF: Objection; the document</p> <p>20 speaks for itself.</p> <p>21 You can answer the question.</p> <p>22 And you're at seven hours, Irv.</p> <p>23 You can finish his question.</p> <p>24 A. I guess I would -- I do think the question</p> <p>25 speaks for itself.</p>
<p style="text-align: right;">Page 342</p> <p>1 are?</p> <p>2 You can answer the question if you can.</p> <p>3 BY MR. ACKELSBURG:</p> <p>4 Q. Like, maybe an attorney general?</p> <p>5 MR. SCHEFF: Well, then the attorney</p> <p>6 general can testify to that, Irv. Don't ask him to</p> <p>7 get in the mind of the attorney general. Ask him a</p> <p>8 proper question, and he'll answer it.</p> <p>9 BY MR. ACKELSBURG:</p> <p>10 Q. You can answer the question.</p> <p>11 MR. SCHEFF: Answer if you can.</p> <p>12 A. I mean, I didn't say that the -- the</p> <p>13 question is can they -- you know, what's your</p> <p>14 response to -- to the claim that the payday lender</p> <p>15 are essentially renting a tribe? I think the</p> <p>16 response is right, we thought the tribal lenders,</p> <p>17 and I -- frankly, I still do, were overseeing and</p> <p>18 managing the program as appropriate for -- for</p> <p>19 lenders and not dissimilar from the way that banks</p> <p>20 work with third parties. So I -- I guess I don't</p> <p>21 see anything wrong with the text that's written</p> <p>22 there. I think it's accurate.</p> <p>23 BY MR. ACKELSBURG:</p> <p>24 Q. Number 19, "Do tribal lending operations</p> <p>25 take place on tribal land?" Now, we know there was</p>	<p style="text-align: right;">Page 344</p> <p>1 MR. ACKELSBURG: Okay. No further</p> <p>2 questions.</p> <p>3 MR. SHAPIRO: Christy, Gus, and</p> <p>4 questions for Ken? No.</p> <p>5 Patrick?</p> <p>6 MR. DAUGHERTY: No.</p> <p>7 MR. SHAPIRO: No questions.</p> <p>8 MR. SCHEFF: No questions?</p> <p>9 MR. SHELDON: No questions.</p> <p>10 MR. SCHEFF: No questions.</p> <p>11 Thank you, Mr. Rees.</p> <p>12 MR. SHELDON: Off the record.</p> <p>13 THE VIDEOGRAPHER: We are off the</p> <p>14 record. The time is 5:46 p m.</p> <p>15 (Deposition concluded at 5:46 p m.)</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>

1 CHANGES AND SIGNATURE
 2 KENNETH REES MAY 8, 2018
 3 Reason Codes: (1) to clarify the record; (2) to
 4 conform to the facts; (3) to correct a transcription
 5 error; (4) other (please explain)

6 PAGE LINE CHANGE REASON

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1 SIGNATURE
 2
 3 I, KENNETH REES, have read the
 4 foregoing deposition, or have had it read to me, and
 5 hereby affix my signature that same is true and
 6 correct, except as noted above.

7
 8 _____
 9 KENNETH REES
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1 IN THE UNITED STATES DISTRICT COURT
 2 FOR THE EASTERN DISTRICT OF PENNSYLVANIA

3 COMMONWEALTH OF PENNSYLVANIA *
 4 BY ATTORNEY GENERAL JOSH *
 SHAPIRO, *

5 Plaintiff, *

6 VS. * Civil Action
 * No. 14-7139-JCJ

7 THINK FINANCE, INC., et al., *
 Defendants. *

8 REPORTER'S CERTIFICATION
 DEPOSITION OF KENNETH REES
 MAY 8, 2018

9
 10 I, CHRISTY R. SIEVERT, CSR, RPR, in
 11 and for the State of Texas, hereby certify to the
 12 following:

13 That the witness, KENNETH REES, was duly
 14 sworn by the officer and that the transcript of the
 15 oral deposition is a true record of the testimony
 16 given by the witness;

17 I further certify that the signature of
 18 the deponent was requested by the deponent or a
 19 party and is to be returned within 30 days from date
 20 of receipt of the transcript. If returned, the
 21 attached Changes and Signature Page contains any
 22 changes and the reasons therefor;

23 I further certify that I am neither
 24 counsel for, related to, nor employed by any of the
 25 parties or attorneys in the action in which this

1 proceeding was taken, and further that I am not
 2 financially or otherwise interested in the outcome
 3 of the action.

4 Subscribed and sworn to on this the 15th
 5 day of May, 2018.
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 Texas CSR 8172
 Expiration Date: 12/31/2018
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In the Matter of:

Think Finance

August 23, 2016
Kenneth Earl Rees

Condensed Transcript with Word Index



For The Record, Inc.
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1	3
<p>1 CONSUMER FINANCIAL PROTECTION BOARD</p> <p>2</p> <p>3</p> <p>4 In the matter of:)</p> <p>5 THINK FINANCE)</p> <p>6 a corporation.)</p> <p>7 _____)</p> <p>8</p> <p>9 Tuesday, August 23, 2016</p> <p>10</p> <p>11 Securities and Exchange Commission</p> <p>12 801 Cherry Street</p> <p>13 Fort Worth, Texas</p> <p>14</p> <p>15 The investigational hearing testimony of</p> <p>16 KENNETH EARL REES commences, pursuant to notice, at</p> <p>17 9:08 a.m.</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>	<p>1 I N D E X</p> <p>2 EXAMINATION OF KENNETH EARL REES: PAGE</p> <p>3 August 23, 2016</p> <p>4 BY MR. VAUGHN 5, 83, 86, 91, 92, 98 146, 151,158, 183, 190, 190, 197</p> <p>5</p> <p>6 BY MS. BUCHKO 82, 86, 88, 92, 97, 146, 149, 151, 177, 185, 190, 194</p> <p>7</p> <p>8</p> <p>9 CORRECTIONS MADE BY WITNESS 232</p> <p>10 SIGNATURE OF WITNESS 233</p> <p>11 REPORTER'S CERTIFICATION 234</p> <p>12 HEARING EXHIBITS INITIAL REFERENCE</p> <p>13 Exhibit 1 Civil Investigative Demand 9</p> <p>14</p> <p>15 Exhibit 2 E-mail dated 2/9/2015 from 18</p> <p>16 Exhibit 3 E-mail dated 1/12/2015 from 20</p> <p>17 Kim Palermo to Brett Horrocks</p> <p>18 Kim Palermo to Beverly C. Rachal</p> <p>19</p> <p>20 Exhibit 4 E-mail dated May 14, 2012 from 24</p> <p>21 Ken Rees to Kelly Ann Scott</p> <p>22 Exhibit 5 E-mail dated September 10, 20013 from 56</p> <p>23 Ken Rees to Chris Lutes</p> <p>24</p> <p>25 Exhibit 6 E-mail dated July 24, 2013 from 74</p> <p>26 Walt Ramsey to Ken Rees</p> <p>27 Exhibit 7 E-mail dated June 10, 2013 from 98</p> <p>28 Bill Kontgis to Ken Rees</p> <p>29</p> <p>30 Exhibit 8 E-mail Thread dated July 25th, 2013 110</p> <p>31</p> <p>32 Exhibit 9 E-mail dated December 14,2012 from 124</p> <p>33 Chris Lutes to Ken Rees</p>
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<p>1 APPEARANCES:</p> <p>2 ON BEHALF OF THE CONSUMER FINANCIAL PROTECTION BUREAU:</p> <p>3 BENJAMIN E. VAUGHN, ESQ.</p> <p>4 VANESSA A. BUCHKO, ESQ.</p> <p>5 Consumer Financial Protection Bureau</p> <p>6 1700 G Street NW</p> <p>7 Washington, D.C. 20006</p> <p>8 202-435-7944</p> <p>9 benjamin.vaughn@cfpb.gov</p> <p>10 vanessa.buchko@cfpb.gov</p> <p>11</p> <p>12 ON BEHALF OF THINK FINANCE:</p> <p>13</p> <p>14 MR. RICHARD L. SCHEFF</p> <p>15 MR. DAVID F. HERMAN</p> <p>16 Montgomery McCracken</p> <p>17 123 South Broad Street</p> <p>18 Avenue of the Arts</p> <p>19 Philadelphia, PA, 19109</p> <p>20 215-772-7502</p> <p>21 rscheff@mmwr.com</p> <p>22 dherman@mmwr.com</p> <p>23</p> <p>24 ALSO PRESENT:</p> <p>25 Ms. Sarah Fagin Cutrona, In-house Counsel</p>	<p>1 I N D E X</p> <p>2 HEARING EXHIBITS INITIAL REFERENCE</p> <p>3</p> <p>4 Exhibit 10 E-mail String dated 167</p> <p>5 September 24, 2013 from Greg Hall</p> <p>6 to Kevin Dahlstrom</p> <p>7</p> <p>8 Exhibit 11 E-mail dated March 22, 2013 from 173</p> <p>9 Mark Curry to Ken Rees</p> <p>10 Exhibit 12 E-mail dated August 25, 2013 from 197</p> <p>11 Ken Rees to Chris Lutes</p> <p>12</p> <p>13 Exhibit 13 E-mail dated July 09, 2013 from 206</p> <p>14 Michelle Nguyen to Patsy Hauer,</p> <p>15 Angela Patterson</p> <p>16</p> <p>17 Exhibit 14 E-mail dated June 12, 2013 from 211</p> <p>18 Jason Harvison to Ken Rees</p> <p>19 Exhibit 15 E-mail dated March 27, 2013 from 215</p> <p>20 Scott Davis to Kevin Dahlstrom,</p> <p>21 Kerry Miles</p> <p>22 Exhibit 16 E-mail dated September 26, 2013 222</p> <p>23 from Michelle Curtis to Ken Rees</p> <p>24</p> <p>25 Exhibit 17 E-mail dated April 18, 2013 from 226</p> <p>26 Ken Rees to Jason Harvison,</p> <p>27 Michelle Nguyen Chris, Lutes</p> <p>28</p> <p>29 (Retained by counsel.)</p>

<p style="text-align: right;">5</p> <p>1 PROCEEDINGS</p> <p>2 Whereupon--</p> <p>3 KENNETH EARL REES,</p> <p>4 a witness, called for examination, having been first</p> <p>5 duly sworn, was examined and testified as follows:</p> <p>6 EXAMINATION</p> <p>7 BY MR. VAUGHN:</p> <p>8 Q. Good morning, Mr. Rees.</p> <p>9 A. Good morning.</p> <p>10 Q. Could you please state your full name for the</p> <p>11 record?</p> <p>12 A. Kenneth Earl Rees.</p> <p>13 Q. Are the individuals here with you today your</p> <p>14 attorneys?</p> <p>15 A. Yes, they are.</p> <p>16 Q. They're representing you personally?</p> <p>17 A. Yes.</p> <p>18 MR. VAUGHN: Counsel, could you please</p> <p>19 introduce yourself?</p> <p>20 MR. SCHEFF: Yes. Richard L. Scheff,</p> <p>21 Montgomery McCracken Walker & Rhoads.</p> <p>22 MR. HERMAN: David F. Herman, Montgomery</p> <p>23 McCracken Walker & Rhoads.</p> <p>24 MS. CUTRONA: Sarah Fagin Cutrona, Ken</p> <p>25 Rees' personal attorney.</p>	<p style="text-align: right;">7</p> <p>1 A. I believe it was called PreCash.</p> <p>2 Q. Do you recall what year that was?</p> <p>3 A. I'm kind of guessing. Maybe '09.</p> <p>4 Q. Any testimony, other than that?</p> <p>5 A. No.</p> <p>6 Q. So a few ground rule to make things as</p> <p>7 efficient as possible today. I'm sure your attorneys</p> <p>8 have gone over them with you, as well.</p> <p>9 You have to provide audible answers in</p> <p>10 response to my questions. If you nod or shake your</p> <p>11 head, the court reporter can't take down your answer.</p> <p>12 Does that make sense?</p> <p>13 A. Yes.</p> <p>14 Q. If you don't understand one of my questions,</p> <p>15 please ask that I rephrase, and I'll try to ask a</p> <p>16 better one. And if you do answer my question, I'm</p> <p>17 going to assume that you understood it. Is that fair?</p> <p>18 A. Yes.</p> <p>19 Q. It's very important that we not talk over</p> <p>20 each other. When you're talking, you know, among</p> <p>21 friends or in a social situation, it's very easy to</p> <p>22 chat back and forth.</p> <p>23 If we do that, it's hard for the court</p> <p>24 reporter to take down what we're saying, and we'll</p> <p>25 have a complicated record. So I'll do my best to make</p>
<p style="text-align: right;">6</p> <p>1 MR. VAUGHN: My name is Benjamin Vaughn,</p> <p>2 and my colleague with me is Vanessa Buchko. We're</p> <p>3 attorneys for the Consumer Financial Protection</p> <p>4 Bureau.</p> <p>5 This is an investigational hearing</p> <p>6 governed by 12 USC 5562 in its implementing</p> <p>7 regulations. Any objections that may be properly</p> <p>8 raised are limited as set forth in the regulations.</p> <p>9 The stenographic recording arranged by</p> <p>10 the Bureau is the only recording permitted. No other</p> <p>11 recording may be created.</p> <p>12 Q. (By Mr. Vaughn) Mr. Rees, have you ever been</p> <p>13 deposed before or offered live witness testimony?</p> <p>14 A. I have.</p> <p>15 Q. In what situations?</p> <p>16 A. It was a lawsuit against a board member.</p> <p>17 Q. A board member of Think Finance?</p> <p>18 A. A board member of Think Finance, correct.</p> <p>19 Q. In connection with his departure from the</p> <p>20 company?</p> <p>21 A. No, no, no. It was in connection with a</p> <p>22 business deal we had with his previous company.</p> <p>23 Q. Which board member was that?</p> <p>24 A. Steve Shaper.</p> <p>25 Q. And what was his previous company?</p>	<p style="text-align: right;">8</p> <p>1 sure I let you finish your answer before I ask another</p> <p>2 question, and wait until I'm done with my question</p> <p>3 before you begin your answer.</p> <p>4 Does that make sense?</p> <p>5 A. Yes.</p> <p>6 Q. Okay. If you need a break during the day</p> <p>7 today, let us know, and we should be able to</p> <p>8 accommodate it, as long as a question isn't pending.</p> <p>9 But we'll take pretty regular breaks during the day</p> <p>10 with an eyes towards wrapping up with you as soon as</p> <p>11 possible so you can get back to your life.</p> <p>12 A. Great. Things.</p> <p>13 Q. Given your position at Think Finance, it's</p> <p>14 obviously likely that you came into information that</p> <p>15 was protected by Think finance's attorney-client</p> <p>16 privilege -- information, legal advice that Think's</p> <p>17 attorneys gave to the company.</p> <p>18 We don't want you to tell us any of that</p> <p>19 information today. If I ask a question during today's</p> <p>20 hearing and the basis for your answer would solely be</p> <p>21 information that Think's attorneys passed on to you or</p> <p>22 that was relayed to you, please tell me that, and I'll</p> <p>23 ask you some kind of surrounding questions, and we'll</p> <p>24 figure out if it's appropriate for you to give us the</p> <p>25 answer.</p>

<p style="text-align: right;">57</p> <p>1 Q. And take a moment and review the e-mail.</p> <p>2 A. Okay.</p> <p>3 Q. Have you finished your review of the e-mail?</p> <p>4 A. I did.</p> <p>5 Q. Do you recall this discussion?</p> <p>6 A. Not in detail.</p> <p>7 Q. Do you recall something about it generally?</p> <p>8 A. Yes.</p> <p>9 Q. What do you recall?</p> <p>10 A. I recall that there was a period that ACH</p> <p>11 providers had stopped doing business with -- with</p> <p>12 tribal lenders, and we had to help the tribes find an</p> <p>13 ACH processor for their business.</p> <p>14 Q. And what's an ACH processor?</p> <p>15 A. That provides the money transfer from the --</p> <p>16 from the lender into the customer's bank account, and</p> <p>17 from the customer to the lender's bank account for</p> <p>18 payments.</p> <p>19 Q. And looking at the other individuals in the</p> <p>20 e-mail, Bill -- can you pronounce the last name for</p> <p>21 me?</p> <p>22 A. Kontgis.</p> <p>23 Q. Kontgis. I was given it yesterday and</p> <p>24 couldn't remember.</p> <p>25 Jason Harvison?</p>	<p style="text-align: right;">59</p> <p>1 Q. Was GPLS stopping the purchase of those loans</p> <p>2 for some period of time because of the ACH issues, or</p> <p>3 was that an independent decision?</p> <p>4 A. I don't -- I don't know the -- the exact</p> <p>5 reason for it.</p> <p>6 Q. And the reference to MBL formers, am I</p> <p>7 correct that the term MBL formers refers to a customer</p> <p>8 with an existing line of credit who wants to make a</p> <p>9 subsequent draw?</p> <p>10 A. That appears to be correct.</p> <p>11 Q. Do you have an understanding with -- in the</p> <p>12 paren, Tom, to confirm with Richard at BPC. Do you</p> <p>13 know who Tom is?</p> <p>14 A. It would have been Tom Welch.</p> <p>15 Q. And who's Tom Welch?</p> <p>16 A. He was the account manager that -- that we</p> <p>17 worked with at Victory Park Capital.</p> <p>18 Q. And who's Richard?</p> <p>19 A. Richard Levy is the head of Victory Park</p> <p>20 Capital.</p> <p>21 Q. And so the issue here, to your understanding,</p> <p>22 is that for -- for some reason, GPLS was not buying</p> <p>23 participation interests for some period of time, and</p> <p>24 because of that --</p> <p>25 A. Yeah.</p>
<p style="text-align: right;">58</p> <p>1 A. Yes.</p> <p>2 Q. Chad Bradford and Badar Qureshi?</p> <p>3 A. Yes.</p> <p>4 Q. Who's Badar?</p> <p>5 A. He worked for Chris in the -- I believe it</p> <p>6 was cash -- actually I don't know what -- what his</p> <p>7 role was. He worked in the finance department.</p> <p>8 Q. Chad Bradford, do you recall who he is --</p> <p>9 A. Chad was the chief accounting officer at the</p> <p>10 time.</p> <p>11 Q. Okay. So then in Chris's e-mail, he says,</p> <p>12 Hi. Update on today's many meetings. Skipping to No.</p> <p>13 3, confirm with VPC that since we are now above the</p> <p>14 cash threshold, that we can turn on MBL formers</p> <p>15 (multidraw) beginning next Monday (Tom to confirm with</p> <p>16 Richard at BC -- BPC).</p> <p>17 Do you see that?</p> <p>18 A. Yes.</p> <p>19 Q. Do you understand what he's reporting to?</p> <p>20 A. I'm actually not certain. I'm -- but, I</p> <p>21 mean, what I'm reading from this is that the tribes</p> <p>22 were unable to make loans to former Mobiloans'</p> <p>23 customers due to -- it appears that GPLS stopping the</p> <p>24 purchase of those -- those loans for some period of</p> <p>25 time.</p>	<p style="text-align: right;">60</p> <p>1 Q. -- MBL customers who had taken out one draw</p> <p>2 from their line of credit couldn't, then, take out</p> <p>3 subsequent draws from their lines of credit?</p> <p>4 A. Yeah. The terms of the GPLS agreement with</p> <p>5 the tribes, the participation agreement, was that they</p> <p>6 would have the right to buy but not the obligation so</p> <p>7 they could always decide whether they wanted to</p> <p>8 continue buying participations.</p> <p>9 And they would typically notify the</p> <p>10 tribes that there was a change in what they were</p> <p>11 expecting to buy.</p> <p>12 Q. Do you have -- had this happened before with</p> <p>13 Mobiloans where the funding that GPLS was willing to</p> <p>14 contribute to buying participation interest was</p> <p>15 insufficient to allow Mobiloans customers to make</p> <p>16 subsequent draws on their lines?</p> <p>17 A. The funding was insignificant. See, I -- I</p> <p>18 can't speak -- well, let me read this again. I'm</p> <p>19 sorry. I just don't -- don't understand what the</p> <p>20 "above the cash threshold is." I do know that there</p> <p>21 were, I believe, multiple times, but certainly I</p> <p>22 remember one time where GPLS decided to stop buying</p> <p>23 participations for -- for a period of time really</p> <p>24 across all of the tribal portfolio.</p> <p>25 But I -- I don't know what the cash</p>

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1 threshold refers to. I'm sorry.

2 **Q. That's okay.**

3 **Based on how the Mobiloans product is**
 4 **designed as a line of credit product, is every time**
 5 **GPLS decided for some period of time not to continue**
 6 **buying participation interest, does that mean that**
 7 **Mobiloans' consumers could not make subsequent draws**
 8 **on their lines?**

9 A. Really it -- well, it -- it -- it meant
 10 really exactly that, that they wouldn't buy
 11 participations from Mobiloans at that time.

12 **Q. So -- and I get what the impact of that would**
 13 **be on Plain Green and Great Plains. It would mean**
 14 **that they couldn't originate individual loans if they**
 15 **didn't have GPLS ready to buy the participation**
 16 **interest.**

17 **But as it pertains to Mobiloans where you**
 18 **have the a line of credit structure, is the effect,**
 19 **then, that not only could they not originate new lines**
 20 **but they wouldn't be able to permit existing customers**
 21 **to make multidraws on their existing lines?**

22 A. If the -- if the tribe did not have access to
 23 sufficient funding from another source, they wouldn't
 24 be able to originate any more credit for the
 25 customers, that's correct.

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1 **Q. Okay. And that would be new lines and**
 2 **multidraws for Mobiloans?**

3 A. That's correct.

4 **Q. And that would be just individual new loans**
 5 **for Great Plains and Great Plains?**

6 A. Correct.

7 **Q. Looking at --**

8 A. I -- there was, of course, cash flow coming
 9 back to the tribes, so they -- they may have tried to
 10 do some ongoing fundings, and they probably would have
 11 focused on multidraws, but I -- I don't know the
 12 specifics of -- of whether -- you know, this adjusted
 13 multidraws stopped for at least some period of time.

14 **Q. Okay. On line number four, Mr. Lutes writes**
 15 **to you, I'm going to present VPC with a balance sheet**
 16 **analysis that shows we should get 50 percent cash**
 17 **credit for investment we had in GPLS. This would**
 18 **equate to about 35 million in additional cash**
 19 **variability. That would enable us to grow more**
 20 **aggressively beginning 10/1. Tom was okay with this,**
 21 **assuming ACH continues to be stable.**

22 **Do you see that?**

23 A. Yes.

24 **Q. Do you have an understanding of what**
 25 **Mr. Lutes is referring to with respect to the 50**

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1 **percent cash credit for investment we've made in GPLS?**

2 A. I don't know the specifics. I -- I do know
 3 that the tribes were trying to grow very aggressively,
 4 and so they would have been -- you know, the -- any
 5 sort of -- any times that GPLS wouldn't buy
 6 participations, that slowed down the growth of those
 7 businesses.

8 As to the 50 percent cash credit, as --
 9 as we discussed, Think Finance made a -- an investment
 10 in -- in GPLS, and, again, I'm not sure exactly -- I
 11 could -- I could speculate about what that cash credit
 12 is, but -- but obviously it related to the investment
 13 that Think -- that Think Finance made in GPLS.

14 **Q. Is this -- the investment that's referenced**
 15 **here, that's separate from the guarantee that Think**
 16 **was obligated to provide?**

17 A. I don't -- I believe the investment form- --
 18 formed a collateralization for that guarantee.

19 **Q. That's all the same thing?**

20 A. I believe so.

21 **Q. Okay. But even if you don't understand the**
 22 **specifics of some of what Mr. Lutes is referring to**
 23 **here, your understanding is that this is an effort by**
 24 **Think Finance to get GPLS to make more cash available**
 25 **to help the tribal lending businesses originate more**

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1 **loans?**

2 A. That's correct.

3 **Q. And then No. 5, then hopefully by 11/1, we**
 4 **can get them to drop the cash requirement down to 25**
 5 **percent from 50 percent so we can continue to grow**
 6 **aggressively in November and December.**

7 **Do you know what that means?**

8 A. I -- I don't know for certain, but I believe
 9 it's in line with what we just discussed.

10 **Q. Same general idea as in No. 4 there, trying**
 11 **to get GPLS to make more cash available?**

12 A. That's what it appears, yes.

13 **Q. Earlier you were giving me a tutorial on the**
 14 **differences between a lending relationship and the**
 15 **acquisition of a participation interest and kind of**
 16 **the different characteristics of that.**

17 **What -- are you familiar with any other**
 18 **businesses that use -- in the lending business that**
 19 **use the acquisition of participation interest**
 20 **financing model that the tribal lenders use?**

21 A. Yes.

22 **Q. Which ones can you think of?**

23 A. I should -- a large percentage of financial
 24 services, mortgages originated, and then
 25 participations bought.

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

COMMONWEALTH OF PENNSYLVANIA *
BY ATTORNEY GENERAL JOSH *
SHAPIRO, *
Plaintiff, *

VS. * Civil Action
* No. 14-7139-JCJ
THINK FINANCE, INC., et al., *
Defendants. *

ORAL AND VIDEOTAPED DEPOSITION OF
CHRISTOPHER LUTES
MAY 3, 2018

DEPOSITION of CHRISTOPHER LUTES,
produced as a witness at the instance of the
Plaintiff, and duly sworn, was taken in the
above-styled and numbered cause on the 3rd day of
May, 2018, from 9:03 a.m. to 5:13 p.m., before
Christy R. Sievert, CSR, RPR, in and for the State
of Texas, reported by machine shorthand, at the Fort
Worth Club, 306 West 7th Street, Fort Worth, Texas
76102, pursuant to the Federal Rules of Civil
Procedure and the provisions stated on the record or
attached hereto.

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Christopher Lutes

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1 P R O C E E D I N G S

2 THE VIDEOGRAPHER: We are now on the

3 record for the video deposition of Chris Lutes. The

4 time is 9:03 a.m. on May 3, 2018.

5 This is the matter of the Commonwealth of

6 Pennsylvania, et al., vs. Think Finance,

7 Incorporated, et al., Civil Action No. 14-7139-JCJ.

8 This is being held in the United States District

9 Court for the Eastern District of Pennsylvania.

10 The court reporter is Christy Sievert.

11 The videographer is Will Raine. Both are

12 representatives of Kaplan, Leaman & Wolfe Court

13 Reporter.

14 And now would counsel please state your

15 appearances for the record.

16 MR. ACKELSBERG: For the Commonwealth

17 of Pennsylvania, Irv Ackelsberg. Also with me,

18 temporarily out in the hall, is Saverio Mirarchi

19 with the attorney general's office.

20 MR. SCHEFF: Irv, could you

21 identify -- could you --

22 MR. ACKELSBERG: Yes. This is Kevin

23 Byers, our consultant.

24 MR. SCHEFF: Thank you.

25 Richard Scheff for Christopher Lutes.

<p style="text-align: right;">Page 9</p> <p>1 MR. HERMAN: David Herman for Kenneth 2 E. Rees. 3 MR. SHELDON: Matt Sheldon for the 4 Think Finance defendants. 5 MR. SHAPIRO: Dan Shapiro for the 6 Victory Park defendants. And Matt Haws, who's in 7 the hall right now, will be joining us shortly. 8 MR. DAUGHERTY: Patrick Daugherty on 9 behalf of National Credit Adjusters. 10 CHRISTOPHER LUTES 11 having been first duly sworn, 12 testified as follows: 13 EXAMINATION 14 BY MR. ACKELSBERG: 15 Q. Good morning, Mr. Lutes. It's very nice to 16 meet you, finally. 17 A. Thank you. Likewise. 18 Q. So we have to go through, as you know, a 19 few preliminaries just to make sure that, first of 20 all, you understand the procedure and what's 21 happening here. Have you been deposed before? 22 A. No, I have not. 23 Q. Okay. So I'm sure your lawyer has gone 24 through this, but I need to do it myself. 25 Basically, the way we're going to proceed, it's a</p>	<p style="text-align: right;">Page 11</p> <p>1 Q. Yeah, the nods aren't going to be picked 2 up. And if I -- and if I say, "Did you mean yes," 3 it's not -- I'm not trying -- it's not an act of 4 disrespect. We just have to get it onto the -- 5 A. Understood. 6 Q. -- onto the record. 7 Right. So nods or shrugs don't work. We 8 need verbal. 9 If you don't know the answer, just -- 10 that's fine, "I don't know." If you don't 11 understand the question, please tell me, and I'll do 12 my best. I might ask you, well, what about the 13 question don't you understand, but we can -- we can 14 work together to clarify the question so we can 15 get -- we can get an answer from you to a question 16 that you understand. 17 A. Uh-huh (affirmative response). 18 Q. Let's see. What else haven't I covered? 19 We're going to take breaks. This will be a long day 20 for all of us. We'll take many breaks. If you need 21 a break, just tell us. 22 A. Okay. 23 Q. And I would just ask you to finish your 24 answer to the pending question, and then we can go 25 off the record and. . .</p>
<p style="text-align: right;">Page 10</p> <p>1 series -- it's questions and answers. I ask a 2 question, you answer as best as you can. There may 3 be objections by your lawyer. And I can assure you 4 there will be objections from your lawyer and maybe 5 from other lawyers. But the way this -- the way 6 this works in a deposition as opposed to a trial is 7 that after the objections, you still have to answer 8 the question unless the -- your lawyer specifically 9 directs you not to answer the question. And, you 10 know, I'm guessing we're not going to be doing a 11 whole lot of that today, but it's -- but there will 12 be plenty of objections. 13 And so it's important that we not talk 14 over one another. The court reporter has to get 15 everything down. My question, the lawyer's 16 objection, your answer, the whole thing. But -- do 17 you understand that? 18 A. Yeah, I do. 19 Q. Okay. And we are being videotaped today, 20 but the official -- the record of this deposition is 21 the written transcript that the court reporter is 22 preparing, and the reason I stress that is that 23 nonverbal responses aren't picked up. So, you know, 24 if I say, "Is that a yes or a no," I mean -- 25 A. I shouldn't nod my head.</p>	<p style="text-align: right;">Page 12</p> <p>1 A. Got it. 2 Q. And, finally, is there any reason, such as 3 illness, hearing disorder, medication, lack of 4 sleep, things like that, that would get in the way 5 of you giving this deposition your full attention 6 today? 7 A. No. 8 Q. Okay. So we are going to go just a little 9 bit into your background, and I'm -- 10 A. Sure. 11 Q. -- going to try to breeze through this. My 12 understanding is that you're a CPA. Is that right? 13 A. Yes, I am, in the state of Arizona. 14 Q. Okay. And is that -- and your 15 certification is current? 16 A. Yes, it is. 17 Q. Okay. And am I right that at some point, 18 you were the CEO -- the CFO, the chief financial 19 officer, for Silicon Valley Bank? 20 A. Yes, I was. 21 Q. And where is that located? 22 A. That's located in Santa Clara, California. 23 Q. And during what period of time were you 24 with the bank? 25 A. I was with the bank from 1994 through 2001,</p>

<p style="text-align: right;">Page 13</p> <p>1 and I was the CFO from 1998 through 2001.</p> <p>2 Q. And what position did you have before you</p> <p>3 were the CFO?</p> <p>4 A. Before I was the CFO, I was the controller.</p> <p>5 Q. Okay. And then you were at Think Finance</p> <p>6 from 2007 until?</p> <p>7 A. The end of 2014.</p> <p>8 Q. '14. And then you went over to Elevate?</p> <p>9 A. Yes.</p> <p>10 Q. And both at -- during your entire time at</p> <p>11 Think Finance, you were the CFO?</p> <p>12 A. Yes, I was the CFO.</p> <p>13 Q. And you're the CFO at Elevate?</p> <p>14 A. Yes.</p> <p>15 Q. Okay. And as I understand from your bio,</p> <p>16 you're also on the board of a bank named Central</p> <p>17 Pacific Bank?</p> <p>18 A. Yes. I was recently appointed to that.</p> <p>19 Q. And where is that?</p> <p>20 A. That's in Honolulu, Hawaii.</p> <p>21 Q. Lucky you.</p> <p>22 A. Well, it's lucky except when you have to</p> <p>23 make the flight eight times a year.</p> <p>24 Q. Okay. All right. Just a few questions</p> <p>25 about Silicon Valley Bank. Is it regulated by the</p>	<p style="text-align: right;">Page 15</p> <p>1 Credit Services, which was credit cards.</p> <p>2 BY MR. ACKELSBURG:</p> <p>3 Q. Okay. All right. And so you understand</p> <p>4 that sometimes lenders in a -- in a regulated</p> <p>5 environment, sometimes they're making loans to hold</p> <p>6 on their own books, and sometimes they're making</p> <p>7 loans that they then sell in the secondary market.</p> <p>8 You're familiar with that, right?</p> <p>9 MR. SCHEFF: Object to the form.</p> <p>10 You can answer.</p> <p>11 A. Yes, I am familiar with that.</p> <p>12 BY MR. ACKELSBURG:</p> <p>13 Q. And in a -- in a case where -- so, for</p> <p>14 example, I mean, we all watched the mortgage debacle</p> <p>15 ten years ago. You're familiar a little bit with,</p> <p>16 like, what happened there, right?</p> <p>17 MR. SCHEFF: Object to the form.</p> <p>18 You can answer the question.</p> <p>19 A. I'm not familiar with the specific aspect</p> <p>20 of the mortgage. I lived through that financial</p> <p>21 crisis while I was the CFO at Think Finance.</p> <p>22 BY MR. ACKELSBURG:</p> <p>23 Q. Right. So in a regulated -- again, just</p> <p>24 from what -- just from what you know about the way</p> <p>25 banks operate within a regulated environment,</p>
<p style="text-align: right;">Page 14</p> <p>1 FDIC?</p> <p>2 A. Yes, it is.</p> <p>3 Q. And so then I take it you're familiar with</p> <p>4 the regulatory environment within which banks</p> <p>5 operate?</p> <p>6 A. Sure.</p> <p>7 MR. SCHEFF: Object to the form.</p> <p>8 BY MR. ACKELSBURG:</p> <p>9 Q. And the -- and Silicon Valley Bank, during</p> <p>10 the years you were there, did they offer mortgages?</p> <p>11 A. No, I do not believe we did.</p> <p>12 Q. Did you offer --</p> <p>13 A. The qualification would be if we did, it</p> <p>14 would be to our private wealth customers.</p> <p>15 Q. Okay. Did you have any consumer lending</p> <p>16 products?</p> <p>17 A. To my knowledge, no, we did not.</p> <p>18 Q. Are -- are you familiar with the -- just</p> <p>19 from being in the banking world, are you familiar</p> <p>20 with the way mortgage lending works or consumer</p> <p>21 lending, in general, within a regulated environment?</p> <p>22 MR. SCHEFF: Object to the form.</p> <p>23 You can answer the question.</p> <p>24 A. Yes, I'm familiar with consumer lending.</p> <p>25 Prior to Silicon Valley Bank, I worked for Household</p>	<p style="text-align: right;">Page 16</p> <p>1 sometimes -- like you said, sometimes the banks are</p> <p>2 making loans to hold on their own balance sheet, and</p> <p>3 sometimes they're -- they're selling the loan off</p> <p>4 after they originate it, right?</p> <p>5 MR. SCHEFF: Object to the form.</p> <p>6 You can answer.</p> <p>7 A. Yes.</p> <p>8 BY MR. ACKELSBURG:</p> <p>9 Q. And sometimes a lender -- a bank lender</p> <p>10 might, even though it sells the loan, it might take</p> <p>11 back the servicing of that loan. You're familiar</p> <p>12 with those kind of transactions, right?</p> <p>13 MR. SCHEFF: Object to the form.</p> <p>14 MR. SHELTON: Object to form.</p> <p>15 A. Yes, I'm familiar primarily with the</p> <p>16 mortgage industry generally, yeah.</p> <p>17 BY MR. ACKELSBURG:</p> <p>18 Q. Yeah. And so in that -- in a situation</p> <p>19 where, you know, a bank is making the loan but</p> <p>20 taking back the servicing, the bank would generally</p> <p>21 make a fee from the origination transaction and then</p> <p>22 make a fee through the servicing work that it does</p> <p>23 on the -- on the mortgage in that kind of a</p> <p>24 situation?</p> <p>25 MR. SCHEFF: Object to the form.</p>

<p style="text-align: right;">Page 17</p> <p>1 BY MR. ACKELSBURG:</p> <p>2 Q. It's typically the way --</p> <p>3 A. I would say there's multiple ways, from my</p> <p>4 perspective that --</p> <p>5 Q. Right.</p> <p>6 A. -- that banks could generate fees.</p> <p>7 Q. Right.</p> <p>8 A. It doesn't necessarily need to just be</p> <p>9 through --</p> <p>10 Q. And a --</p> <p>11 A. -- the servicing.</p> <p>12 Q. And a bank could generate a fee --</p> <p>13 MR. SCHEFF: Please let him finish his</p> <p>14 answer.</p> <p>15 BY MR. ACKELSBURG:</p> <p>16 Q. And a bank could generate fees on</p> <p>17 transactions where they don't hold the loan itself</p> <p>18 on it -- on their books; that's -- that's pretty</p> <p>19 common, right?</p> <p>20 MR. SCHEFF: Object to the form.</p> <p>21 You can answer the question if you can.</p> <p>22 A. From my perspective, that's getting a</p> <p>23 little bit out of my expertise because I haven't</p> <p>24 been in that situation.</p> <p>25 BY MR. ACKELSBURG:</p>	<p style="text-align: right;">Page 19</p> <p>1 one question. And then you said, "You know what</p> <p>2 special purpose vehicles are, correct?" So which</p> <p>3 question do you want him to answer?</p> <p>4 MR. ACKELSBURG: He already answered</p> <p>5 both of those.</p> <p>6 MR. SCHEFF: I don't know that he did.</p> <p>7 If he did, then let's move on to the next question.</p> <p>8 A. I do not -- I do know what a special</p> <p>9 purpose vehicle is.</p> <p>10 BY MR. ACKELSBURG:</p> <p>11 Q. Okay. What is it?</p> <p>12 A. It's typically a conduit, a legal entity</p> <p>13 where, you know, a bank whose capital constraint</p> <p>14 will typically sell some type of loan participation</p> <p>15 or an outright sell, you know, to that third party,</p> <p>16 SPV, that typically has third-party investors that</p> <p>17 are purchasing it.</p> <p>18 Q. And, typically, in that situation, the --</p> <p>19 there would be an asset that would be owned by the</p> <p>20 special purpose vehicle, and -- and some other</p> <p>21 entity would be providing services to that special</p> <p>22 purpose vehicle, like, collecting the payments,</p> <p>23 things like that, right? You're --</p> <p>24 MR. SCHEFF: Object to the form.</p> <p>25 BY MR. ACKELSBURG:</p>
<p style="text-align: right;">Page 18</p> <p>1 Q. All right. You're familiar with the</p> <p>2 securitization of mortgages, how that happened?</p> <p>3 A. I'm familiar with the term securitization</p> <p>4 in mortgages. I've never been involved in a</p> <p>5 mortgage securitization.</p> <p>6 Q. Okay. But you understand that mortgage</p> <p>7 lenders will often sell the mortgage to something</p> <p>8 called a "special purpose vehicle"? You know what</p> <p>9 special purpose vehicles are, correct?</p> <p>10 MR. SCHEFF: Object to the form.</p> <p>11 Which question do you want him to answer? Which</p> <p>12 question do you want him to answer? You've got two</p> <p>13 questions there. You've got to choose which one</p> <p>14 because we want to have a clean record.</p> <p>15 MR. ACKELSBURG: Richard, this is</p> <p>16 going to be a long day.</p> <p>17 MR. SCHEFF: I know. But you need</p> <p>18 to -- you need to ask good questions.</p> <p>19 MR. ACKELSBURG: We have barely</p> <p>20 started, Richard.</p> <p>21 MR. SCHEFF: I understand, Irv, but</p> <p>22 you need to ask good questions. You asked him, "You</p> <p>23 understand" -- and maybe we can -- "You understand</p> <p>24 that mortgage lenders will often sell mortgages to</p> <p>25 something called a special purpose vehicle?" That's</p>	<p style="text-align: right;">Page 20</p> <p>1 Q. In the mortgage context, that's -- that's</p> <p>2 the way it works, right?</p> <p>3 MR. SCHEFF: Object to the form.</p> <p>4 A. From my perspective, special purpose</p> <p>5 vehicles can buy the whole receivable. They can buy</p> <p>6 a participation in the receivable. So they can hold</p> <p>7 assets in various ways.</p> <p>8 BY MR. ACKELSBURG:</p> <p>9 Q. Were there -- were there any loans that</p> <p>10 Silicon Valley made while you were there that used</p> <p>11 special purpose vehicles?</p> <p>12 A. No.</p> <p>13 Q. Was -- so your first was -- well, what</p> <p>14 about at Household?</p> <p>15 A. At Household, yes. Although, I was not</p> <p>16 involved in that, and that's going back, you know,</p> <p>17 almost 25 years. But Household did securitize</p> <p>18 credit card receivables.</p> <p>19 Q. Would it be -- would it be fair to say that</p> <p>20 the first time you actually were working with a</p> <p>21 special purpose vehicle structure would have been</p> <p>22 the Universal Fund at -- when you got to Think</p> <p>23 Finance?</p> <p>24 A. That would have been the most recent as a</p> <p>25 CFO. Like I said, when I was at Household, you</p>

Page 21	Page 23
<p>1 know, we did do credit card securitizations, and I 2 was in the regulatory accounting area. My wife, 3 actually, was involved in the financial 4 securitization aspect. So I was familiar with the 5 concept. But, yes, from an actual practical 6 standpoint and as a CFO, the first time that I dealt 7 with a special purpose vehicle would have been at -- 8 with the Universal Fund II.</p> <p>9 Q. Well, let's just talk about your hiring by 10 Think Finance. How did that -- how did that happen?</p> <p>11 A. I think the connection at the time was -- 12 well, one, Think Finance didn't have -- and it 13 technically wasn't Think Finance at the time. The 14 entity name was PayDay One Corporation. PayDay One, 15 Inc., I believe.</p> <p>16 The connection was is that my CEO at 17 Silicon Valley Bank, John Dean, was an early 18 investor in Think Finance, or the predecessor 19 company. He was also on the board of directors. He 20 knew they were looking for a chief financial 21 officer. Sequoia Capital and Technology Crossover 22 Ventures were venture capital investors in it.</p> <p>23 I think, you know, the way it was pitched 24 to me is that this was an entity that was looking to 25 go public at some point in the near future, they</p>	<p>1 knowledge because it's prior to me arriving in 2 January of 2007. You know, the PayDay One was 3 founded in the 2001, 2002 time span by some local 4 Fort Worth businessmen that were familiar with 5 financial services. They kind of bootstrapped the 6 company up with their own capital, and, you know, 7 local funding efforts. Generated, I think, a decent 8 sized company. I mean, it was probably -- I know 9 when I joined in -- at the end of 2006, per my 10 recollection of looking at the audited financials 11 when I arrived, that they had 86 million of revenue, 12 and that would have all been from the payday product 13 that they were offering at that point in time.</p> <p>14 They brought in the venture capitalists in 15 2005. September of 2005, Sequoia Capital, at that 16 round and then again in February of 2006. But 17 the -- the venture capital money raised ended up 18 being really a liquidity event for the original 19 founders/investors in the company. Not my prior 20 CEO, John Dean, with Startup Capital Ventures. It 21 would have been the -- the two local Fort Worth 22 businessmen.</p> <p>23 BY MR. ACKELSBURG:</p> <p>24 Q. And when you say liquidity event, that 25 really means, like, paying them -- paying that --</p>
Page 22	Page 24
<p>1 would like to have a CFO with public company 2 experience. I was a public company CFO at Silicon 3 Valley Bank, but one thing that I was never -- I 4 guess one remaining item on my CFO bucket list, so 5 to speak, would be to take a company public. And I 6 know with Sequoia Capital and TCV, those are two 7 very well-respected venture capital firms, and it 8 looked like a -- a good opportunity. And so that 9 was the connection and how I ended up interviewing 10 for -- for Think Finance.</p> <p>11 Q. Do you -- do you know how Mr. Dean and 12 Think Finance got connected?</p> <p>13 A. Yes. Mr. Dean is -- after leaving Silicon 14 Valley Bank, he started a company small venture 15 capital fund called Startup Capital Ventures, and 16 one of his other venture partners is, Bob Rees, who 17 is the uncle of Ken Rees, the CEO, at the time, of 18 PayDay One and Think Finance.</p> <p>19 Q. So PayDay One was -- so PayDay One, back in 20 those days before you -- before you got there was 21 kind of a startup that was -- that was connecting to 22 venture capital?</p> <p>23 A. It was a start- --</p> <p>24 MR. SCHEFF: Object to the form.</p> <p>25 A. I'll answer the question based on -- on my</p>	<p>1 A. Exactly. The --</p> <p>2 Q. -- investment off that?</p> <p>3 A. -- capital didn't stay on the balance sheet 4 to, like, fund future growth of the company. It 5 went to the founders as a liquidity event, and they 6 exchanged, you know, their ownership in the company 7 to -- to the venture capital firms.</p> <p>8 Q. And who were those founders?</p> <p>9 A. "Founders" is a loose term that I use, so I 10 may not be correct in, quote, calling them founders.</p> <p>11 Q. I understand.</p> <p>12 A. I do know that the original founder of the 13 company was Mike Stinson.</p> <p>14 Q. Because I've seen his name --</p> <p>15 A. Yes.</p> <p>16 Q. -- as one of the -- one of the 17 stakeholders. So he was one of those Fort Worth 18 businessmen that was actually doing the payday 19 business -- payday loan business initially?</p> <p>20 A. Yes.</p> <p>21 Q. And then -- and then he --</p> <p>22 A. Yeah, he, along with his wife, Linda 23 Stinson.</p> <p>24 MR. SCHEFF: Wait until he finishes 25 asking the question.</p>

<p style="text-align: right;">Page 25</p> <p>1 A. Sorry. I apologize.</p> <p>2 BY MR. ACKELSBURG:</p> <p>3 Q. I got it.</p> <p>4 Okay. And then the result of the -- the</p> <p>5 venture capital investment from TCV and Sequoia was</p> <p>6 that the Stinsons could get -- could, basically,</p> <p>7 get -- cash in some of their money?</p> <p>8 MR. SCHEFF: Object to the form.</p> <p>9 You can answer the question.</p> <p>10 A. Yes, that is my belief. Although, I wasn't</p> <p>11 there at the time.</p> <p>12 BY MR. ACKELSBURG:</p> <p>13 Q. Okay. And what's the date of your hire --</p> <p>14 A. It was --</p> <p>15 Q. -- at Think?</p> <p>16 A. The date of my hire, again, as CFO at</p> <p>17 PayDay One was January of 2007.</p> <p>18 Q. When did -- when did PayDay One start</p> <p>19 using -- I think it was -- before it was Think</p> <p>20 Finance, it was ThinkCash, right? I don't know if</p> <p>21 that was the formal name or just the doing</p> <p>22 business --</p> <p>23 A. Yes. Yes, it was.</p> <p>24 Q. Was that -- it started out as just a d/b/a,</p> <p>25 right, the ThinkCash?</p>	<p style="text-align: right;">Page 27</p> <p>1 A. I'll -- I'll answer the question, but I'll</p> <p>2 change it slightly. The structure, technically,</p> <p>3 wasn't in place because we didn't launch until</p> <p>4 February of 2007. And when I say "we," that would</p> <p>5 be we as the service provider to First Bank of</p> <p>6 Delaware that was the originator of the loan.</p> <p>7 The structure per the agreements -- and</p> <p>8 the agreements, again, were in place prior to me</p> <p>9 arriving -- would be that the bank, First Bank of</p> <p>10 Delaware, would be the originator of the loans, that</p> <p>11 there would be a marketing agreement between, at the</p> <p>12 time, the PayDay One entity. I think it was about</p> <p>13 to become called the ThinkCash entity. So if you</p> <p>14 don't mind, I'll just start calling it ThinkCash at</p> <p>15 this point in time. It would be -- a ThinkCash</p> <p>16 subsidiary would provide marketing services to the</p> <p>17 bank and -- and receive a fee.</p> <p>18 I believe there might have also been a</p> <p>19 licensing entity that licensed the technology</p> <p>20 platform, some underwriting scores and other IT-type</p> <p>21 of services to the bank for a fee. And that was the</p> <p>22 structure of that initial launch of the product.</p> <p>23 Q. So there -- as I understand it, there</p> <p>24 was -- the marketing -- under the arrangement with</p> <p>25 First Bank of Delaware, the marketing would be done</p>
<p style="text-align: right;">Page 26</p> <p>1 A. That, I don't know. That's probably more</p> <p>2 of a -- of a legal thing.</p> <p>3 Q. Okay. But you still -- you got there</p> <p>4 January of 2007, and the company's name is PayDay</p> <p>5 One?</p> <p>6 A. Right.</p> <p>7 Q. Okay. But that also -- that day,</p> <p>8 January -- or that period of time, January 2007, is</p> <p>9 also the time when the ThinkCash product with First</p> <p>10 Bank of Delaware was launched, right?</p> <p>11 MR. SCHEFF: Object to the form.</p> <p>12 You can answer the question.</p> <p>13 A. Yes, the ThinkCash product was launched</p> <p>14 with First Bank of Delaware in February of 2007.</p> <p>15 The structure and all of the agreements were already</p> <p>16 in place. The agreements had already been finalized</p> <p>17 with First Bank of Delaware prior to my arrival. So</p> <p>18 I really don't have any expertise related to or</p> <p>19 experience related to the negotiations and the</p> <p>20 discussions of the product and why they decided upon</p> <p>21 the structure that they did or whatnot.</p> <p>22 BY MR. ACKELSBURG:</p> <p>23 Q. But the structure as -- but why don't you</p> <p>24 just describe for us the structure that was already</p> <p>25 in place that you had to learn to understand.</p>	<p style="text-align: right;">Page 28</p> <p>1 by the ThinkCash entity, right? The -- there's a</p> <p>2 website, right?</p> <p>3 A. My understanding is, is that the -- the</p> <p>4 bank owned the website. It was a bank website.</p> <p>5 Q. I didn't mean whether it was owned.</p> <p>6 A. Yeah.</p> <p>7 Q. I'm not really --</p> <p>8 A. Okay.</p> <p>9 Q. I'm not talking ownership. I'm really</p> <p>10 talking about operations and --</p> <p>11 MR. SCHEFF: Object to the form. You</p> <p>12 know, this -- we're not in a question-and-answer</p> <p>13 mode here. Please ask questions and answer the</p> <p>14 questions as opposed to having a conversation</p> <p>15 because the record is a mess. So please ask a</p> <p>16 question.</p> <p>17 BY MR. ACKELSBURG:</p> <p>18 Q. You're familiar with those agreements. I</p> <p>19 mean, it might make sense for us to -- just to put</p> <p>20 them in front of you and then. . .</p> <p>21 MR. ACKELSBURG: So what I'm going</p> <p>22 to -- these are -- these are exhibits that have</p> <p>23 already been identified. This is Exhibits P-102 and</p> <p>24 103. This is already marked.</p> <p>25 A. (Reviews document.)</p>

<p style="text-align: right;">Page 29</p> <p>1 Apologies for me taking a minute to flip 2 through. I haven't looked at this agreement in 3 years. 4 MR. SCHEFF: Just for the record, in 5 102 -- and there may be more instances of this, I 6 just don't know. Bu in 102, there's TF-PA 00875. 7 The next page is TF-PA 00840, so it went back 8 35 pages. 9 MR. ACKELSBURG: Right. Thank you. 10 MR. SHELTON: And just to note, the 11 pages after that continue consecutively in the 840 12 and 841 and so range. 13 MR. ACKELSBURG: This is an exhibit 14 that we've already had. It's in the record. But 15 anyway, thank you for all of that. 16 BY MR. ACKELSBURG: 17 Q. But the -- so first of all, I know that 18 soon after this period -- I mean, this is -- this is 19 preTailwind and TC Decision Sciences, right? 20 MR. SCHEFF: Object to the form. 21 BY MR. ACKELSBURG: 22 Q. You know what I'm -- you understand that, 23 right? 24 MR. SCHEFF: Object to the form. 25 BY MR. ACKELSBURG:</p>	<p style="text-align: right;">Page 31</p> <p>1 and servicing agreement was TC Loan Service, LLC. 2 Q. And there was also -- it's actually two 3 agreements. There's also a guarantee agreement, 4 that's the -- the last pages that are out of order 5 that your lawyers were referencing that. Do you see 6 that? There was -- 7 A. What pages would those be? 8 Q. It's at the end. It actually starts at 9 TF-PA 840. 10 A. Oh, yes, I see. 11 Q. Do you see it? 12 A. Yes, I do. 13 Q. Okay. And this was -- and this was a 14 guarantee made by the corporate umbrella, the PayDay 15 One entity, to First Bank of Delaware, right? 16 MR. SCHEFF: Object to the form. 17 BY MR. ACKELSBURG: 18 Q. Do you see that? 19 MR. SCHEFF: Object to the form. 20 A. Yes, I do. 21 BY MR. ACKELSBURG: 22 Q. Okay. And then there was also what was 23 called a master participation agreement that was 24 also entered -- that was also signed on January 23, 25 2007, or -- do you see that? That was another part</p>
<p style="text-align: right;">Page 30</p> <p>1 Q. There came a time when the marketing entity 2 was called TailWind and the -- and the technology 3 entity was called TC Decision Sciences? 4 MR. SCHEFF: Object to the form. 5 BY MR. ACKELSBURG: 6 Q. You remember -- you remember that, right? 7 MR. SCHEFF: Object to the form. 8 You can answer the question. 9 A. Yes, I do. 10 BY MR. ACKELSBURG: 11 Q. Okay. And this is from before that, before 12 they're -- before Think was using -- or PayDay One 13 was using TailWind and TC Decision Sciences, right? 14 MR. SCHEFF: Object to the form. 15 You can answer the question. 16 A. Yes, I believe these were the agreements 17 that were, if not the original, at least preceded 18 those agreements. 19 BY MR. ACKELSBURG: 20 Q. So the -- the Think entity that was 21 providing all of the services, whether marketing or 22 technology, was called at this point TC -- TC Loan, 23 right? 24 A. Based on looking at this agreement, yes, 25 the -- the entity that entered into the marketing</p>	<p style="text-align: right;">Page 32</p> <p>1 of the -- it was one of the agreements that 2 constituted the original structure. 3 A. Yes, it was. 4 Q. Yeah. All right. And that was with a 5 different Think entity called TC Financial? 6 A. In looking at this master participation 7 agreement, yes, TC Financial, LLC, entered into the 8 agreement. 9 Q. And so -- and just so -- and if you look 10 at -- staying on the master participation agreement, 11 if you look at page 4, at this point in time, the -- 12 the same day that the loan was originated in the 13 name of First Bank of Delaware, a 99 percent 14 participation interest in the loan was conveyed to 15 the Think entity, TC Financial. Do you see that? 16 MR. SCHEFF: Object to the form. 17 A. Give me one minute to read the paragraph. 18 BY MR. ACKELSBURG: 19 Q. Sure. 20 A. I'm assuming you're referring to clause 21 2.2? 22 Q. Yes. 23 A. (Reviews document.) 24 Could you restate your question again now 25 that I've read it?</p>

<p style="text-align: right;">Page 33</p> <p>1 Q. That -- is it -- am I correct, that under 2 this agreement, the loans that were originated in 3 the name of First Bank of Delaware, with regard to 4 those -- each of those loans, a 99 percent 5 participation interest was conveyed to Think -- TF 6 Financial on a daily basis?</p> <p>7 MR. SCHEFF: Object to the form.</p> <p>8 MR. SHELDON: Object to form.</p> <p>9 A. Based on my recollection and looking at 10 this agreement, each day 99 percent participation 11 interest in the ThinkCash installment loan product. 12 Your question had referred to just the bank product, 13 but this would be the ThinkCash installment loan 14 product was sold by First Bank of Delaware to TC 15 Financial, LLC.</p> <p>16 BY MR. ACKELSBURG:</p> <p>17 Q. Yeah, and just so that we're clear during 18 this period of time, the company still had its own 19 PayDay One label that it -- it was marketing, right?</p> <p>20 MR. SCHEFF: Object to the form.</p> <p>21 You can answer the question.</p> <p>22 MR. SHELDON: Same objection.</p> <p>23 A. Yes, at that point in time in early 2007, 24 the company was also marketing -- lending directly a 25 Payday One product.</p>	<p style="text-align: right;">Page 35</p> <p>1 A. I would say it -- I would phrase that as it 2 evolved based upon the bank and feedback the bank 3 was receiving, from my perspective, from the FDIC 4 and its regulators on how to further strengthen the 5 structure of the product.</p> <p>6 Q. And what do you remember about some of that 7 feedback?</p> <p>8 A. The -- the first feedback that I remember 9 would have been sometime -- and I'm guessing, so 10 forgive me if I'm off a year or so -- sometime in 11 mid to late 2008. I don't think it was in 2009. I 12 think it would have been late 2008 that Alonzo 13 Primus, the -- and I believe I'm pronouncing his 14 name right -- the CEO and president of First Bank of 15 Delaware -- and this is my recollection. He didn't 16 have this discussion with me.</p> <p>17 But what I believe happened was, is that 18 he had talked with Ken Rees after the bank, I think, 19 had gone through their first FDIC exam with this 20 program and the ThinkCash installment loan in place. 21 And the feedback was, is that the regulators were -- 22 would recommend that we set up an SPV type 23 structure. And by "we," the bank would set up an 24 SPV type structure.</p> <p>25 They realized that the bank was capital</p>
<p style="text-align: right;">Page 34</p> <p>1 BY MR. ACKELSBURG:</p> <p>2 Q. And so from the standpoint of view as -- as 3 a financial -- as the CFO in terms of the financial 4 activity being generated by these two products, you 5 had -- you had on your balance sheet the -- the 6 loans that were -- the PayDay One loans that were 7 made directly, right? Those were on the balance 8 sheet, correct?</p> <p>9 MR. SCHEFF: Object to the form.</p> <p>10 A. Yes. The PayDay loans sat directly on our 11 balance sheet since we were the direct lender.</p> <p>12 BY MR. ACKELSBURG:</p> <p>13 Q. And a 99 percent interest in the -- in the 14 ThinkCash loans during this period of time would 15 also have been sitting on the balance sheet?</p> <p>16 MR. SCHEFF: Object to the form.</p> <p>17 A. Yes, the 99 percent participation purchased 18 from the bank on the ThinkCash installment loans 19 were also on our balance sheet.</p> <p>20 BY MR. ACKELSBURG:</p> <p>21 Q. Okay. And then during the course of 2007 22 and then into 2008, the transaction with -- the 23 structure, the arrangement that your company had 24 with First Bank of Delaware, it went through various 25 iterations, various revisions; am I right?</p>	<p style="text-align: right;">Page 36</p> <p>1 constrained and couldn't keep, you know, all of 2 those install- -- ThinkCash installment loans on 3 their books. Rather than selling a 99 percent 4 interest back to -- back to TC Financial, LLC, they 5 recommended to the bank that the bank set up an SPV 6 and have third-party investors, lenders lend to that 7 SPV and have that SPV purchase the participations, 8 the 99 percent participations from the bank.</p> <p>9 I think they also recommended some other 10 changes, such as instituting a licensing 11 technology-type agreement whereby a Think Finance 12 entity would provide licensing the -- the technology 13 loan platform for the bank and also the underwriting 14 scores as suggestions for -- to help the bank 15 underwrite those customers. And there probably 16 would have been some changes to the marketing 17 agreement, I believe, as well at that point in time.</p> <p>18 Q. And you think those were actually 19 suggestions by the FDIC?</p> <p>20 A. That is my recollection or my general 21 understanding. Again, I didn't have a privy direct 22 conversation with the Alonzo or the bank regarding 23 that, or did I ever see, but that was my impression.</p> <p>24 Q. Since you didn't hear from that -- from the 25 FDIC directly, or from the bank, I mean -- well, how</p>

<p style="text-align: right;">Page 37</p> <p>1 did you gain that understanding?</p> <p>2 A. Well, from my perspective, why would we be</p> <p>3 changing the program from -- you know, my</p> <p>4 understanding is, is that the -- it was the bank had</p> <p>5 gone through their first exam with the regulators.</p> <p>6 There was no criticism, per se, of the program, but</p> <p>7 the FDIC had recommended to the bank was to make</p> <p>8 these changes. That's my recollection of what</p> <p>9 happened.</p> <p>10 Q. Now, you do remember the cease and desist</p> <p>11 from the FDIC in October of 2008, right? You do</p> <p>12 remember that?</p> <p>13 A. I am somewhat familiar with that. I never</p> <p>14 saw the cease and desist because, clearly, that's a</p> <p>15 private, you know, confidential document between the</p> <p>16 bank and its regulators.</p> <p>17 Q. And the taxpayers. I mean, it's -- it's --</p> <p>18 MR. SCHEFF: Object to the form.</p> <p>19 BY MR. ACKELSBURG:</p> <p>20 Q. You know, just so you know, cease and</p> <p>21 desists are public documents. So at least this one</p> <p>22 was. I mean, that's where I read it. So I -- but</p> <p>23 if you've never looked at or seen that --</p> <p>24 A. I have -- I have --</p> <p>25 Q. -- that's fine.</p>	<p style="text-align: right;">Page 39</p> <p>1 A. (Reviews document.)</p> <p>2 On page 1, I'm a bit confused, it's</p> <p>3 referring to a Section 20.1 of the agreement, which</p> <p>4 I assume is this marketing and servicing agreement</p> <p>5 that you gave me, but I don't see a Section 20.1 in</p> <p>6 the document that you gave me in that marketing.</p> <p>7 I'm trying to understand what this --</p> <p>8 Q. There's also a participation agreement, so</p> <p>9 I think you're maybe looking at the wrong one.</p> <p>10 There is a Section 20 in the participation</p> <p>11 agreement, so I don't know -- it may be that -- I</p> <p>12 don't know. I mean, I'm just --</p> <p>13 A. No, the only reason I'm asking is because</p> <p>14 here it defines the agreement is the marketing and</p> <p>15 servicing.</p> <p>16 Q. Right.</p> <p>17 A. So the next paragraph refers to</p> <p>18 Section 20.1 of the agreement.</p> <p>19 Q. I see that.</p> <p>20 A. So. . .</p> <p>21 Q. If you'd look at page 24 of the</p> <p>22 participation.</p> <p>23 A. Okay. Let me take a look at that, then.</p> <p>24 Apologies.</p> <p>25 (Reviews document.)</p>
<p style="text-align: right;">Page 38</p> <p>1 A. -- never looked --</p> <p>2 MR. SCHEFF: Just wait for him to</p> <p>3 finish.</p> <p>4 BY MR. ACKELSBURG:</p> <p>5 Q. That's fine. I mean, but -- but, again,</p> <p>6 I'm just trying to understand where you were getting</p> <p>7 your information about what the bank was -- was</p> <p>8 being told by the FDIC.</p> <p>9 A. Your question to me seemed to be why did we</p> <p>10 make -- why were these changes made. And my</p> <p>11 understanding, based on discussions with Ken Rees or</p> <p>12 other senior execs of Think Finance, ThinkCash at</p> <p>13 the time, that would have had those conversations</p> <p>14 with the bank is that those were suggestions coming</p> <p>15 from the FDIC regulators to the bank and the bank to</p> <p>16 us.</p> <p>17 Q. All right. Now -- I understand now. Okay.</p> <p>18 What I want to do, I want to just go</p> <p>19 through a little bit of the evolution of the product</p> <p>20 in the deal documents, if I could. I want to show</p> <p>21 you another exhibit that's already in the record,</p> <p>22 104.</p> <p>23 A. If you don't mind, I'm going to take a few</p> <p>24 minutes to read this document.</p> <p>25 Q. Oh, sure.</p>	<p style="text-align: right;">Page 40</p> <p>1 Q. You see it's talking about reserve</p> <p>2 accounts?</p> <p>3 A. Yes. Yes.</p> <p>4 Q. And that actually -- it's probably just</p> <p>5 a --</p> <p>6 A. Yeah, it was probably just a typo on -- on</p> <p>7 this</p> <p>8 Q. A typo. They're probably referencing the</p> <p>9 participation agreement, right? Do you see that?</p> <p>10 A. Yes, I believe now, in looking at it,</p> <p>11 referencing the participation agreement.</p> <p>12 Q. So --</p> <p>13 A. Hold on one second.</p> <p>14 Q. Oh, sure.</p> <p>15 A. I'm still -- I'm sorry, I'm still reading</p> <p>16 this now that I know what they're referencing.</p> <p>17 Q. Sure.</p> <p>18 A. (Reviews document.)</p> <p>19 Okay.</p> <p>20 Q. Okay. So it looks like from this, and tell</p> <p>21 me if this -- if I'm -- you should explain whether</p> <p>22 you're responding based on your own recollection of</p> <p>23 the way it worked or just based on the documents. I</p> <p>24 don't -- you know, you can -- you can clarify any</p> <p>25 way you want to. But am I right that what this</p>

<p style="text-align: right;">Page 41</p> <p>1 rework of the agreement did in -- in September of</p> <p>2 2007 -- well, one thing that it did was the bank was</p> <p>3 going to retain a larger percentage of an interest</p> <p>4 in the -- in the loans, right? It went from a 1</p> <p>5 percent share -- a 1 percent ownership stake to a</p> <p>6 10 percent ownership stake; am I right?</p> <p>7 MR. SCHEFF: Object to the form.</p> <p>8 A. In reviewing this amendment to the master</p> <p>9 participation agreement on Section 2.2(a), yes, I</p> <p>10 believe that based on my recollection and in looking</p> <p>11 at this document as well, what this Section 2.2(a)</p> <p>12 of the amendment is doing is increasing the bank</p> <p>13 retaining 10 percent of the ThinkCash installment</p> <p>14 loans on its books and selling 90 percent to, I</p> <p>15 believe, TC Financial, as opposed to the prior</p> <p>16 original agreement would have been the bank keeping</p> <p>17 1 percent, retaining 1 percent on their books and</p> <p>18 selling a 99 percent participation to TC Financial.</p> <p>19 BY MR. ACKELSBURG:</p> <p>20 Q. Now, with regard to the bank's stake, which</p> <p>21 was originally 1 percent but then a few months later</p> <p>22 became -- became 10 percent, was the bank using its</p> <p>23 own capital for that -- for that portion of the --</p> <p>24 of the stake in the product?</p> <p>25 MR. SCHEFF: Object to the form.</p>	<p style="text-align: right;">Page 43</p> <p>1 we're talking about, right?</p> <p>2 MR. SCHEFF: Object to the form.</p> <p>3 You can answer the question if you can.</p> <p>4 A. Yeah, let me restate that a little bit,</p> <p>5 because, again, I get where you're going with the</p> <p>6 intent. But the bank would approve a ThinkCash</p> <p>7 installment loan customer for a loan. They would</p> <p>8 fund out of their own bank account -- let's assume</p> <p>9 it was a \$2,000 loan to the customer. They would</p> <p>10 fund all \$2,000 out of that -- out of their own</p> <p>11 funds to that customer, typically, via ACH on an</p> <p>12 overnight basis. So they would approve a customer</p> <p>13 on a Monday. Typically, the customer would receive</p> <p>14 the funds on a Tuesday via ACH.</p> <p>15 BY MR. ACKELSBURG:</p> <p>16 Q. And then at some point, I don't know</p> <p>17 whether -- whether it was still on the current</p> <p>18 business day or -- I know later it became a two-day</p> <p>19 delay. But then at some point, the participation</p> <p>20 transaction occurs, and some of that 2,000 -- in</p> <p>21 that example, some of that money would then be</p> <p>22 replaced by the participation entity; am I right?</p> <p>23 MR. SCHEFF: Object to the form.</p> <p>24 You can answer the question if you can.</p> <p>25 A. Yeah, my recollection -- recollection and</p>
<p style="text-align: right;">Page 42</p> <p>1 A. Capital can be defined many ways, so I'm</p> <p>2 not -- you know, from my perspective -- let me</p> <p>3 rephrase your question, but I think I still get the</p> <p>4 intent of it by answering it this way. The bank was</p> <p>5 using their own funds --</p> <p>6 BY MR. ACKELSBURG:</p> <p>7 Q. Yes.</p> <p>8 A. -- to originate all of the loan and retain</p> <p>9 10 percent, whether that came in the form of equity</p> <p>10 capital or debt or deposits from their bank</p> <p>11 customers, however, they were using their own</p> <p>12 liquidity to originate a hundred percent and then</p> <p>13 also to maintain 10 percent on their books.</p> <p>14 Q. Okay. So -- right. And I appreciate the</p> <p>15 clarification. And I'm sure this is going to happen</p> <p>16 over the course of the day that I'm not -- this</p> <p>17 isn't my field, and it's -- it's been quite an</p> <p>18 experience trying to understand all this.</p> <p>19 But -- so the loan -- on day one the loan</p> <p>20 is made, and that loan -- and what that means is,</p> <p>21 money is going to go into a consumer's account,</p> <p>22 right? That's -- in a practical sense, that's what</p> <p>23 funding a loan means, someone's got to come up with</p> <p>24 the dollars -- the lending -- the lending capital to</p> <p>25 put into a consumer's bank account. That's what</p>	<p style="text-align: right;">Page 44</p> <p>1 understanding is, is that -- well, first, a lot of</p> <p>2 this -- you know, in regards to this particular</p> <p>3 amendment, again, I believe -- I don't have direct</p> <p>4 knowledge, but I believe that the reason for this</p> <p>5 change from the bank holding just 1 percent --</p> <p>6 retaining 1 percent to 10 percent was upon the</p> <p>7 recommendation of the FDIC or its regulators.</p> <p>8 Because from my perspective in what I heard, the</p> <p>9 regulators wanted the bank to have more skin in the</p> <p>10 game, so to speak, you know, have more of the loan</p> <p>11 balance on their books on a routine basis.</p> <p>12 They would then, you know, sell under this</p> <p>13 agreement the 10 percent or -- pardon me. They</p> <p>14 would retain 10 percent and sell 90 percent. So in</p> <p>15 my example, if we had a \$2,000 loan, if they</p> <p>16 originated a \$2,000 loan, they approve a customer on</p> <p>17 a Monday, overnight via ACH the \$2,000 gets</p> <p>18 deposited into the customer's account the bank, the</p> <p>19 bank's account on a Tuesday, on that Tuesday we</p> <p>20 would also -- we, in terms of helping the bank --</p> <p>21 "we" being Think Finance helping the bank settle</p> <p>22 that using our loan platform, remit \$1,800 back to</p> <p>23 the bank. So that way the bank would end up holding</p> <p>24 \$200 on their balance sheet, and TC Financial would</p> <p>25 have \$1800, or 90 percent participation interest.</p>

<p style="text-align: right;">Page 45</p> <p>1 Again, it's because, from my perspective, 2 the bank's capital constrained. I also don't think 3 the bank's regulators wanted them holding a hundred 4 percent of these -- I think the regulators probably 5 view these, rightly or wrongly, more risky than your 6 traditional mortgage or prime credit cards, so they 7 didn't want the bank setting aside a large amount of 8 capital for these types of loans, but they were 9 comfortable with the bank retaining up to 10 percent 10 of the loan balances on their books. 11 BY MR. ACKELSBURG: 12 Q. Okay. And the other thing it looks 13 happened in September of 2007, was the introduction 14 of a concept called "revenue share." Am I right? 15 That's -- that's when the revenue share started? 16 A. To be honest, from my perspective, I would 17 have assumed it started day one, but I may be wrong 18 on that. I mean, that -- certainly, Exhibit E, this 19 particular amendment introduces -- or I shouldn't 20 say introduces -- definitely details out the 21 computation of program revenues. 22 So based upon looking at this amendment, I 23 would say that, yes, this would probably be the 24 first time that the concept of a program revenue 25 share between TC Financial and First Bank of</p>	<p style="text-align: right;">Page 47</p> <p>1 participations at a premium or through other some 2 type of, you know, revenue share, profit share type 3 of arrangement. 4 Q. And just so that we're clear on what we 5 mean by "revenue share," so we're talking about a 6 percentage based fee on the -- on the 90 percent 7 that the bank is selling off, right? That's, 8 essentially, what we're talking about, right? 9 MR. SCHEFF: Object to the form. 10 A. In looking at Exhibit E of this amendment, 11 you know, it says "Computation of Program Revenues," 12 and it says, "TC Financial shall pay the lender" -- 13 and the lender is First Bank of Delaware -- "a 14 percentage of program revenues as follows." 15 And let me read it for a second. 16 (Reviews document.) 17 To your question, you know, I'm not 18 sure in looking at this. I probably need a little 19 bit more time. And if it's important, I can take 20 some more time. 21 BY MR. ACKELSBURG: 22 Q. We don't need to get -- we really don't 23 need to get into details. 24 A. Yeah, I'm not quite clear whether the -- 25 the program revenue share was on the full 100</p>
<p style="text-align: right;">Page 46</p> <p>1 Delaware came into play. 2 And it's possible, I guess, in retrospect, 3 looking back, that probably weren't sure, we and the 4 bank, you know, whether the product would take off. 5 And I think at this point in time, as I recall, 6 the -- the bank was pretty successful in originating 7 loans to consumers during that point in time. 8 And so I think at that point, my guess 9 is -- again, I wasn't involved in -- even though I 10 was the CFO, strangely, I wasn't -- I don't recall 11 being involved in the discussions as to what the 12 profit share amount should be, but we probably 13 decided, hey, we've got to figure out a way to, you 14 know -- because most financial banks, when they're 15 selling, are either retaining mortgage servicing 16 rights, to your point, in generating some fee income 17 or selling the participations at a premium or doing 18 something to kind of get compensated for the fact if 19 you're only -- if you're originating a hundred 20 percent of the loan but only keeping 10 percent of 21 the loan on your books, you're certainly giving up 22 some amount of revenue stream by selling the 23 participation off. 24 And a lot of times, at least it's my 25 understanding, that companies will sell those</p>	<p style="text-align: right;">Page 48</p> <p>1 percent of the loans or just on the 90 percent 2 participation, but . . . 3 Q. Okay. But -- 4 A. But at a minimum, it would be at least on 5 a -- on -- 6 Q. On the 90 percent. 7 A. -- on the 90 percent participation. 8 Q. Yeah. Okay. Now, we're talking about 9 consumer loans with an average APR in excess of 200 10 percent, right? 11 MR. SCHEFF: Object to the form. 12 A. Yeah, I actually don't recall what the 13 average APR -- 14 BY MR. ACKELSBURG: 15 Q. They were high, though, right? 16 MR. SCHEFF: Object to the form. 17 A. I would say based on my understanding, 18 the -- the APR of the loans -- of the ThinkCash 19 loans originated by First Bank of Delaware were 20 north of a 36 percent APR. 21 BY MR. ACKELSBURG: 22 Q. Well, how far north? 23 MR. SCHEFF: Object to the form. 24 If you want a document to show him, then 25 please show him. Don't make him guess out of thin</p>

<p style="text-align: right;">Page 49</p> <p>1 air. He's testified that he doesn't recall.</p> <p>2 A. I actually don't recall.</p> <p>3 BY MR. ACKELSBURG:</p> <p>4 Q. Okay.</p> <p>5 A. I mean, because we had other products,</p> <p>6 we've had other things over time. I do know that</p> <p>7 they would be north of 36 percent.</p> <p>8 Q. Okay. Now, at the time that -- this is in</p> <p>9 the 2007 time period. Am I right that First Bank of</p> <p>10 Delaware had products that it was marketing through</p> <p>11 other entities besides Think Finance, other</p> <p>12 so-called service providers?</p> <p>13 MR. SCHEFF: Object to the form.</p> <p>14 A. Based on my recollection -- again, I did</p> <p>15 not have a lot of direct interaction with -- with</p> <p>16 the bank at all during that time span -- I would</p> <p>17 assume that since they're a bank, they offer lots of</p> <p>18 products and services. They take deposits. They</p> <p>19 make loans. But I'm not aware of, you know, who</p> <p>20 they partnered with if they had other types of</p> <p>21 partners similar to our type of arrangement.</p> <p>22 BY MR. ACKELSBURG:</p> <p>23 Q. I mean, specifically, online lenders.</p> <p>24 A. I do not have any recollection.</p> <p>25 Q. Okay. Now --</p>	<p style="text-align: right;">Page 51</p> <p>1 MR. SCHEFF: Object to the form.</p> <p>2 You can answer.</p> <p>3 A. Again, my recollection based on that point</p> <p>4 in time -- and, again, I think a lot of the</p> <p>5 suggestions for these amendments or evolution of the</p> <p>6 program came directly from the bank. They weren't,</p> <p>7 based on my understanding, you know, suggestions</p> <p>8 from us. It was suggested by Alonzo Primus, the CEO</p> <p>9 and president of First Bank of Delaware. And,</p> <p>10 again, I will assume that a lot of those</p> <p>11 recommendations that he requested related to the</p> <p>12 program came from his discussions with the</p> <p>13 regulators through the second -- or first or second</p> <p>14 exam related to them overseeing the product.</p> <p>15 BY MR. ACKELSBURG:</p> <p>16 Q. I mean, I don't --</p> <p>17 A. But, yet, to answer the question more</p> <p>18 directly, yes, based on my recollection, sometime in</p> <p>19 late 2008, based upon the bank's recommendations, we</p> <p>20 further amended or at least changed the name of the</p> <p>21 marketing entity to TailWind Marketing. Yes,</p> <p>22 there -- at that time, I think, there was the first</p> <p>23 agreement from a Decision -- TC Decision Sciences'</p> <p>24 standpoint licensing the technology and platform and</p> <p>25 underwriting scores to the bank to help them</p>
<p style="text-align: right;">Page 50</p> <p>1 A. I'll qualify that in one sense. And I</p> <p>2 apologize. I would have assumed later that when we</p> <p>3 get to the point of Universal Fund II, the reason</p> <p>4 why there's a Universal Fund II is because there was</p> <p>5 a Universal Fund I with some other program. I do</p> <p>6 not know what that program related to, whether that</p> <p>7 was north of 36 percent APR loans, whether it was</p> <p>8 online or partnering with a brick-and-mortar</p> <p>9 program, but I do know when we get to discussing --</p> <p>10 and I assume at some point we will discuss Universal</p> <p>11 Fund II -- the reason why it was called, and that</p> <p>12 was a name that the bank, Alonzo Primus, suggested</p> <p>13 because there was already a Universal Fund I that we</p> <p>14 had nothing to do with.</p> <p>15 Q. So let's go -- let's go to the Universal</p> <p>16 Fund period and -- but just -- and we can look at</p> <p>17 the deal documents if we need to, but just to try to</p> <p>18 cut through it, in roughly October 2008, there were</p> <p>19 new -- new deal documents between Think and First</p> <p>20 Bank of Delaware where the marketing was going to be</p> <p>21 charged by TailWind and the technology services by</p> <p>22 TC Decision Sciences. Do you remember that --</p> <p>23 MR. SCHEFF: Object to --</p> <p>24 BY MR. ACKELSBURG:</p> <p>25 Q. -- in October 2008?</p>	<p style="text-align: right;">Page 52</p> <p>1 originate their loans. Yes.</p> <p>2 Q. Okay. So we don't need to -- we don't need</p> <p>3 to go over the agreements. Just on that point that</p> <p>4 you -- that you just -- you just mentioned, that you</p> <p>5 do remember that in October 2008, the services being</p> <p>6 provided by -- previously by TC Loan Services were</p> <p>7 split into two different agreements, one with the</p> <p>8 Think entity called TailWind and the other with the</p> <p>9 Think entity called TC Decision Sciences, you</p> <p>10 remember that, and you remember it being at the</p> <p>11 instigation of First Bank of Delaware?</p> <p>12 MR. SCHEFF: Object to the form.</p> <p>13 You can answer if you can.</p> <p>14 A. In -- in 2008, fall of 2008, my</p> <p>15 understanding is, is that, yes, we did amend the</p> <p>16 structure of the program, again, at the request of</p> <p>17 First Bank of Delaware, to amend the marketing</p> <p>18 agreement, and, in particular, change the name of</p> <p>19 the marketing entity from -- I think it was TC Loan</p> <p>20 Service, LLC, in this first agreement dated</p> <p>21 January 23, 2007, to TailWind Marketing, LLC, I</p> <p>22 believe.</p> <p>23 And at the bank's request, we also entered</p> <p>24 into a new agreement with them, between TC Decision</p> <p>25 Sciences, LLC, and First Bank of Delaware, to</p>

<p style="text-align: right;">Page 53</p> <p>1 formally officially license the technology platform, 2 provide underwriting scores, other types of IT 3 services related to their ThinkCash installment loan 4 product. 5 BY MR. ACKELSBURG: 6 Q. Okay. And then we get to the Universal 7 Fund, which, as I understand, it was formed in 2008 8 but didn't actually start functioning until -- until 9 sometime in early 2009. Does that sound right? 10 MR. SCHEFF: Object to the form. 11 You can answer. 12 A. I'm not -- I don't quite recollect when the 13 Universal Fund II was actually established. We 14 didn't own that legal entity, "we" being ThinkCash, 15 Think Finance at the time, whatever our corporate -- 16 legal corporate entity name was. Universal Fund II 17 was -- was never owned by us, so I'm not quite sure 18 when it was established and who established it. And 19 I actually don't even recall at that time -- because 20 this is also, appreciate, kind of at the height of 21 the financial crisis. 22 I mean, Think Finance -- or ThinkCash, the 23 way prior to -- for -- the way TC Financial, LLC, 24 came up with the cash to purchase the 90 percent 25 participations was with a lending relationship with</p>	<p style="text-align: right;">Page 55</p> <p>1 facilities with Silver Point Capital -- and I can't 2 remember if it was a combined facility for both 3 products or two separate facilities for each 4 product, that was negotiated prior to me stepping on 5 as CFO in January 2007. Ken Rees and Jason Harvison 6 had kind of closed that financing transaction with 7 Silver Point just prior to me arriving. 8 So the -- it would have been done 9 prefinancial crisis in the 2006 time span. And I 10 think the rates seemed very reasonable and 11 attractive, certainly compared to, you know, 12 post-financial crisis or during the financial 13 crisis. Ultimately, what the cost of funds related 14 to, you know, any of -- any of the loans, whether 15 it's our direct lending or whether, you know, for 16 the -- the people originating and what the lenders 17 lend to the SPV end up getting, or even today from 18 an Elevate perspective, you know, the cost of funds 19 is most -- much higher -- 20 BY MR. ACKELSBURG: 21 Q. Right. 22 A. -- post-financial crisis. But I'm just -- 23 I'm sorry, I was expecting that there was a 24 financing arrangement in advance of Universal Fund 25 II. But then let me finish my thought here, and</p>
<p style="text-align: right;">Page 54</p> <p>1 a hedge fund called Silver Point Capital. I believe 2 they were technically out of the Chicago; although, 3 the hedge fund, I think, is in Connecticut, like 4 most hedge funds. 5 And so through 2007 and 2008, Silver Point 6 was providing the funding for TC Financial to 7 purchase the participations, whether it was 8 90 percent or 99 percent originally, from First Bank 9 of Delaware. Silver Point Capital was also 10 providing financing to PayDay One, ThinkCash at the 11 time, for the direct payday -- direct lending payday 12 product -- 13 BY MR. ACKELSBURG: 14 Q. Do you remember -- 15 A. -- as well. 16 Q. Do you remember how much you had to pay for 17 that -- for their money back then? 18 MR. SCHEFF: Object to the form. 19 A. I -- I'm going to guess, the range would 20 have been, roughly, 9 to 12 percent, but the 21 agreement -- and that agreement, again, the reason I 22 don't know -- I can't remember, it was floating 23 rates, so it was -- and it was a revolver in nature, 24 so I'm sure the rates were changing a little bit. 25 The agreement was at -- both -- both</p>	<p style="text-align: right;">Page 56</p> <p>1 bear with me for a second. 2 What ended up happening during the 3 financial crisis, and I specifically remember this 4 in 2008, because that's when, you know, a lot of 5 hedge funds, investments banks were really starting 6 to struggle, primarily related to mortgage loans, 7 credit cards, really not, from my perspective, 8 anything related to do with nonprime installment 9 loans with APRs greater than 36 percent. What 10 really caused the financial crisis was, you know, 11 just traditional mortgages at -- at higher rates but 12 definitely well below 36 percent-type APR products. 13 And certainly credit cards also struggled at that 14 point in time. 15 But Silver Point had a lot of exposure and 16 was highly leveraged. They came to us in 2008 and 17 said: Hey, you know, we really need to skinny down 18 or be repaid on our facility. And they had the 19 right, per the -- the debt agreement, as I recall at 20 that point in time, to request us to repay them. 21 And so that is when I remember myself and 22 Ken Rees -- and Ken going to the bank and saying: 23 Hey, you know, under the existing relationship with 24 TC Financial, LLC, we're not going to be able to 25 borrow as much, to continue to purchase</p>

<p style="text-align: right;">Page 57</p> <p>1 participations from First Bank of Delaware. We're 2 going to try and find another source. Silver 3 Point's requested that we pay down or completely pay 4 off their facility. So you, as the originator, 5 we're letting you know that if you're selling the 6 90 percent participation to us, we're not going to 7 probably be able to grow the portfolio much. If you 8 can go out and find some other third party to 9 purchase the participations, that's great. We'll 10 continue to market, help you market that product. 11 We'll continue to, you know, license our technology, 12 and you pay us under the marketing agreement and the 13 licensing and technology agreement. But when you 14 originate, if you're still going to intend to sell 15 90 percent, you're going to have to find third-party 16 investors or some -- or keep it on your books, or 17 whatnot, but we're not going to be able to buy as 18 much of the loan originations on a go-forward basis 19 because, in essence, we've lost our funding source, 20 Silver Point Capital. 21 Q. All right. And so -- 22 A. And this was all happening during 2008. 23 Q. Right. Right. And so let's just talk 24 about the formation of the Universal Fund. And I -- 25 and I understand that this was largely coming from</p>	<p style="text-align: right;">Page 59</p> <p>1 I'll represent to you that he didn't do -- he didn't 2 appear to have done a lot in terms of himself 3 putting this thing together. Right? You remember 4 that he was -- he was a brother of one of the First 5 Bank of Delaware directors? You remember that, 6 right? 7 MR. SCHEFF: Object to the form; 8 misstates the testimony of the other witness. 9 A. Yeah, that -- that -- 10 MR. SCHEFF: You can answer the 11 question. 12 A. Yeah, you asked a couple of questions, or 13 comments in there. From my perspective, as I said, 14 ThinkCash, at the time, did not establish the 15 Universal Fund II. 16 BY MR. ACKELSBURG: 17 Q. I understand that. 18 A. I know for a fact that Mark Wildstein was 19 the managing member, for lack of a better term, of 20 Universal Fund II. So I would assume that he would 21 have had to have been the person that signed the 22 legal documents establishing Universal Fund II. 23 As I said when I answered the last 24 question, whether he did that himself or whether he 25 got help from First Bank of Delaware or some other</p>
<p style="text-align: right;">Page 58</p> <p>1 First Bank of Delaware, as -- as I understand it. 2 But how did it come to be? Who was doing what? How 3 did -- how did this all get put together? 4 MR. SCHEFF: Object to the form. 5 You can answer. 6 A. You've got a lot of questions there. I'll 7 try -- I think your first question was, you know, 8 who established Universal Fund II. As I said, 9 Universal Fund II was not our entity. 10 BY MR. ACKELSBURG: 11 Q. I understand. 12 A. I believe it was a gentleman named Mark 13 Wildstein who, you know, ended up being the manager, 14 managing member. I believe he technically 15 established Universal Fund II. Whether he did that 16 on his own or whether he did that with the help of 17 the bank -- the bank being First Bank of Delaware -- 18 or some other third parties -- 19 Q. We've already deposed Mr. Wildstein. 20 A. Okay. 21 MR. SCHEFF: Let him finish his 22 answer. Okay? You asked him a question. Let him 23 finish his answer. 24 BY MR. ACKELSBURG: 25 Q. We've already deposed Mr. Wildstein, and</p>	<p style="text-align: right;">Page 60</p> <p>1 sets of lawyers or other third-party consultants, 2 whatnot, I don't recall us being actively involved 3 at all in helping him set that up, and we definitely 4 did not legally own that. 5 Again, this concept came -- was presented 6 to us by Alonzo Primus at First Bank of Delaware 7 because they had already established a similar type 8 of structure once before, hence, the reason why this 9 was Universal Fund II. 10 Q. Now, once the Universal Fund II was 11 created, there -- as I understand it, a new -- a new 12 contractual -- a new form of contract entered -- 13 entered the structure called an "administrative 14 agency agreement." Do you remember that? 15 A. I do remember us entering in as part of the 16 proposed structure with First Bank of Delaware and 17 Universal Fund II the administrative agency 18 agreement. 19 Q. And so before Universal -- before Universal 20 entered the scene, we had a Think -- a Think entity 21 called TailWind doing the marketing, right? 22 A. That is correct. 23 Q. And paid a per-loan fee for that service? 24 A. That is correct. 25 Q. We had a TC Decision Sciences entity doing</p>

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<p>1 the technology side of the service and getting a 2 per-loan fee for that, right?</p> <p>3 A. That is correct.</p> <p>4 Q. Okay. And now, with the entrance of the 5 administrative agency agreement, we -- we have a new 6 Think entity called TC Administrative Services, or 7 TCAS, that was performing a function -- a new 8 function called the administrative function under 9 the administrative agency agreement, the 10 administrative agent function?</p> <p>11 A. As I --</p> <p>12 MR. SCHEFF: Object to the form. 13 Go ahead.</p> <p>14 A. As I recall, the administrative agency 15 agreement was a broader type of agreement. It was 16 proposed by Alonzo, because what he had proposed 17 with Universal Fund II, similar to Universal Fund 18 I -- and I imagine they had a similar type of 19 administrative agency agreement with Universal Fund 20 I -- was -- what he proposed was, Universal Fund II 21 is, in essence, an SPV, and he was going to go out 22 with Mark Wildstein and find lenders, investors. I 23 use that term interchangeably, and so pardon that. 24 I know there might be a technical difference. 25 But, generally speaking, people that would</p>	<p>1 approached us about creating an admin agency 2 agreement that would really serve two purposes. One 3 would just be to handle the basic accounting 4 treasury administration of this SPV, which I guess 5 happens in probably most SPV type of structure 6 environments.</p> <p>7 But, secondarily, and more importantly -- 8 and I think in the back of his mind he knew that we 9 were losing some of the profitability from TC 10 Financial purchasing participations directly from 11 them, and we had lost our source of capital. His 12 point to us was, would you be interested in 13 providing the equivalent of a credit default swap to 14 Universal Fund II so that the investors in Universal 15 Fund II -- because if you think about it, Universal 16 Fund II, if you look at just the basic P&L structure 17 and balance sheet, it's getting 90 percent of the 18 loan participations on its books. So it's going to 19 get 90 percent of the revenue and incur 90 percent 20 of the losses.</p> <p>21 Well, the investors lending to this, 22 again, accredited but not overly sophisticated, you 23 know, probably were worried about the risk of loss: 24 What if I put my \$100,000 in and then all of those 25 loans go bad, I lose my \$100,000? What they were</p>
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<p>1 put money into what I would -- quote, invest money 2 into Universal Fund II. I don't believe they got an 3 actual equity ownership but they're probably 4 lending. That they would put money into this SPV to 5 buy participations from the banks so that the bank 6 can continue to originate loans, retain 10 percent 7 on their books and sell 90 percent to this Universal 8 Fund II SPV.</p> <p>9 When he approached us about that concept, 10 he said the difficulty that he -- that they would 11 have in raising money in that SPV 2 was getting 12 investors, lenders in -- in Universal Fund II to get 13 comfortable with the credit risk of these north of 14 36 percent APR loans. A lot of these investors that 15 he believed he could get money to lend into would be 16 friends and family of First Bank of Delaware.</p> <p>17 And so they're, I would assume, accredited 18 investors but by no means are they a Silver Point 19 Capital, hedge fund type of entity lending in, or a 20 Victory Park Capital entity lending in. I mean, 21 these are people investing 100,000, 250,000, 22 whatnot.</p> <p>23 So he believed that an important way for 24 them -- "them" being the bank -- to get investors 25 to -- to invest or lend to Universal Fund II, he</p>	<p>1 interested in was a fixed return.</p> <p>2 What Alonzo kind of proposed to us, and 3 what we looked at and did the math on and it made 4 sense from our perspective was enter -- as part of 5 this admin agency agreement, let's enter into -- in 6 essence, it becomes a credit default swap as well, 7 whereby, if you took the revenue on the 90 percent 8 of the loans, less the losses on the 90 percent of 9 the loans, less some of the out-of-pocket expenses 10 related to reimbursing the Universal Fund II, 11 reimbursing the bank for the servicing, customer 12 support, collections, data costs, anything related 13 to specifically helping originate those loans, and 14 then paying the bank their, for lack of a better 15 term, profit share, premium, whatever we want to 16 call it, how the bank was earning some additional 17 revenue off the 90 percent that it had sold to 18 Universal Fund II, it would then also, Universal 19 Fund II, promise to pay these third-party investors, 20 lenders to the Universal Fund II a fixed return. 21 And I can't remember what it was. I know it was a 22 very high teens, if not 20 percent return.</p> <p>23 BY MR. ACKELSBURG:</p> <p>24 Q. Would 18 percent sound about right?</p> <p>25 A. 18 percent probably sounds about right.</p>

<p style="text-align: right;">Page 65</p> <p>1 And I believe Mr. Wildstein, as the manager/owner, 2 would get a 1 percent management fee. 3 Q. Out of that 18 percent, right? 4 A. I don't recall. I mean, whether it was on 5 top of or out of, I do know that he got compensated 6 for kind of acting as the administrator and really 7 helping kind of introduce more friends and family 8 in. 9 Let me finish my thought. The net 10 remaining P&L, if it was positive, by us -- what we 11 agreed to do was buy the losses at 60 days past due. 12 We define -- under the bank's charge-off policy, 13 when a customer's loan went 60 days past due, it was 14 deemed to be a charge-off, or a loss. And so what 15 Alonzo requested that we work into this admin agency 16 agreement as kind of the credit default swap is, is 17 that when a loan -- any loan that went 60 days past 18 due -- and the bank would, I assume, take a loss on 19 their 10 percent, but the 90 percent held by the 20 Universal Fund II, we would then buy that -- that 21 loan, that 60-day past due loss loan off the books 22 at par value and bring it off of Universal Fund. 23 So if it was a \$2,000 loan that went 24 60 days past due, at the end of the month, we would 25 be responsible -- "we," the admin agency, I think it</p>	<p style="text-align: right;">Page 67</p> <p>1 the marketing, we felt comfortable that we could 2 enter into a credit default swap with Universal Fund 3 II. And it was a way for us to kind of enhance the 4 return that we were getting in addition to the 5 marketing fees and the technology fees, that we 6 could also get, you know, off this credit -- I call 7 it a credit default swap, you know, additional fee 8 income. 9 Q. All right. 10 A. And more importantly, for the bank, it was 11 a way for them to really attract more third-party 12 capital in so that they could continue to originate 13 loans. 14 Q. Okay. 15 MR. SCHEFF: Can we -- I need a bio 16 break, so can we take a short break? 17 MR. ACKELSBURG: Yes. 18 THE VIDEOGRAPHER: We are off the 19 record at 10:15 a m. 20 (Break taken, 10:15 a m. to 10:35 a m.) 21 THE VIDEOGRAPHER: We are back on the 22 record at 10:35 a m. 23 BY MR. ACKELSBURG: 24 Q. Mr. Lutes, I want to thank you for that 25 extensive explanation for how the administrative</p>
<p style="text-align: right;">Page 66</p> <p>1 was TCAS -- would have to pay Universal Fund \$2,000 2 and move that loan onto our books. 3 But at the end of all that P&L, if the -- 4 if it was in a negative situation, TCAS, under a 5 normal type of credit default situation, would be 6 responsible for kind of -- if it was a negative 7 \$10,000 at the end of the month, TCAS would be 8 responsible for putting \$10,000 into Universal Fund 9 II. So that way these investors knew that their 10 principal at the end of every month -- Alonzo, I 11 remember him stressing, this is really critical. 12 Again, you know, these are friends and family of the 13 bank. They want to be assured that their 14 principal -- you know, they're not interested in all 15 of the upside on these loans, and they don't want to 16 take any downside. They just want a fixed return, 17 but they're willing to invest, but you've got to buy 18 it off. 19 But, you know, we would -- you know, if it 20 was negative, we would put money in. If it was a 21 surplus, like we certainly felt it would be, 22 these -- we felt if the bank is using our technology 23 and using our underwriting scores and, you know, us 24 helping market -- boy, it's really looking ugly out 25 there. Apologies. It's a big lightning strike --</p>	<p style="text-align: right;">Page 68</p> <p>1 agency functioned -- the administrative agency 2 agreement functioned. 3 There is one other element in the 4 relationship that I wanted -- that you didn't 5 mention that I wanted to ask about. My 6 understanding is that besides providing the 7 services -- upfront services via TailWind and TCDS 8 and the administrative services via TCAS, Think was 9 also an investor in Universal Fund. Am I right? 10 MR. SCHEFF: Object to the form. 11 A. Yes, we did invest some of our, what I 12 would say, corporate available cash into the 13 Universal Fund II. 14 BY MR. ACKELSBURG: 15 Q. And just looking at the -- there was -- 16 during Mr. Wildstein's deposition we looked actually 17 at a -- at a list of early -- the investors back in 18 '09. There was also an investment from something 19 called Heartland Exploration. That's a Ken Rees 20 entity. 21 MR. SCHEFF: Object to the form. 22 BY MR. ACKELSBURG: 23 Q. Or Ken Rees, Sr., entity I think. Do you 24 remember that? 25 MR. SCHEFF: Object to the form;</p>

<p style="text-align: right;">Page 69</p> <p>1 misstates the testimony and the document.</p> <p>2 You can answer the question.</p> <p>3 A. Yes, there was an investor in Universal</p> <p>4 Fund II named Heartland Exploration that, I believe,</p> <p>5 was Ken Rees, Sr., the -- the father of Ken Rees,</p> <p>6 our CEO of ThinkCash, was involved in that.</p> <p>7 BY MR. ACKELSBURG:</p> <p>8 Q. And also someone named John Claster. It</p> <p>9 says Rosenberg's uncle. Who's Rosenberg?</p> <p>10 A. John Rosenberg, in reference to that</p> <p>11 particular spreadsheet -- and I don't know if I</p> <p>12 prepared that spreadsheet or if Mark prepared --</p> <p>13 Q. We can put it up on the screen.</p> <p>14 A. No, no. Based off the name, when you said</p> <p>15 Rosenberg, the Rosenberg would reference John</p> <p>16 Rosenberg who was on our board of directors and who</p> <p>17 was a member of Technology Crossover Ventures.</p> <p>18 Q. Okay. So let me -- let me just get it</p> <p>19 straight. So we're in the Universal period. The</p> <p>20 revenue coming to Think Finance, which I don't know</p> <p>21 if it was called PayDay One at that time, or</p> <p>22 whatever it was called back in, let's say, '09,</p> <p>23 there would be the -- the fee revenue from the</p> <p>24 TailWind and TCDS charges, right?</p> <p>25 MR. SCHEFF: Object to the form.</p>	<p style="text-align: right;">Page 71</p> <p>1 to the licensing of the technology.</p> <p>2 Q. Okay. And then in the role of</p> <p>3 administrative agent for the Universal Fund, to the</p> <p>4 extent there would be any money left over after</p> <p>5 paying all the other program costs, that -- that</p> <p>6 residual would be the administrative fee, right?</p> <p>7 MR. SCHEFF: Object to the form.</p> <p>8 BY MR. ACKELSBURG:</p> <p>9 Q. If it was positive, that would be realized</p> <p>10 revenue for the company?</p> <p>11 MR. SCHEFF: Object to the form.</p> <p>12 You can answer the question.</p> <p>13 A. As I recall, and as I explained in my</p> <p>14 somewhat long-winded testimony earlier, the net P&L</p> <p>15 at the end of every month, if it was positive, that</p> <p>16 positive amount of net income in Universal Fund II,</p> <p>17 if it was \$5,000, would be -- come over to TCAS as a</p> <p>18 payment for the credit default swap administrative</p> <p>19 agency agreement.</p> <p>20 If it was negative -- so that's why I</p> <p>21 would say it's not always revenue. And there were</p> <p>22 probably months -- I don't recall, but there were</p> <p>23 probably some months where maybe the -- the expenses</p> <p>24 for Universal Fund II exceeded the amount of revenue</p> <p>25 that the 90 percent participation loans generated,</p>
<p style="text-align: right;">Page 70</p> <p>1 BY MR. ACKELSBURG:</p> <p>2 Q. That would be one source of revenue to the</p> <p>3 company? With -- with regard to the ThinkCash</p> <p>4 product I'm talking about.</p> <p>5 MR. SCHEFF: Object to the form.</p> <p>6 You can answer the question.</p> <p>7 A. I'm sorry.</p> <p>8 BY MR. ACKELSBURG:</p> <p>9 Q. I'm just trying to -- I'm just trying to</p> <p>10 list the sources of revenue for your company during</p> <p>11 the Universal Fund period, and I -- and I think</p> <p>12 there's three separate sources of income, and I just</p> <p>13 want confirmation of that. Or if I have it wrong,</p> <p>14 you explain it to me. Number 1 is fee revenue from</p> <p>15 the TailWind or TCDS contracts. That's one of</p> <p>16 source of revenue, right?</p> <p>17 A. Yes. From my perspective, yes, the -- one</p> <p>18 of the -- one of the sources of revenue for us</p> <p>19 related to the ThinkCash installment loan, First</p> <p>20 Bank of Delaware program, would have been the</p> <p>21 marketing fees paid by First Bank of Delaware to us</p> <p>22 for marketing the ThinkCash installment loan.</p> <p>23 Q. And, similarly, the fees paid to TCDS?</p> <p>24 A. Yes, there would have also been fee income</p> <p>25 that we realized from First Bank of Delaware related</p>	<p style="text-align: right;">Page 72</p> <p>1 but there probably were some months where it was</p> <p>2 negative, in which case TCAS would have been</p> <p>3 responsible for paying money too.</p> <p>4 BY MR. ACKELSBURG:</p> <p>5 Q. I understand.</p> <p>6 A. Okay.</p> <p>7 Q. All right. So -- but to the extent it was</p> <p>8 positive, that would be another source of revenue,</p> <p>9 the admin fee, correct?</p> <p>10 A. Yes, that, I would agree with.</p> <p>11 Q. Okay. And then the third source of revenue</p> <p>12 would be interest on the --</p> <p>13 A. Fourth. Fourth. I'm sorry to interrupt.</p> <p>14 Fourth. You said third.</p> <p>15 Q. The first would be TailWind and TCDS fees,</p> <p>16 the second would be any upside in the program</p> <p>17 producing an admin fee.</p> <p>18 A. No, I thought the second was the TC</p> <p>19 Decision Sciences fee.</p> <p>20 Q. Fine, we can do it that way.</p> <p>21 A. Okay.</p> <p>22 Q. It's absolutely fine.</p> <p>23 And then using your numbers, then the</p> <p>24 fourth would be any income -- any interest income</p> <p>25 resulting from participation as an investor in</p>

<p style="text-align: right;">Page 73</p> <p>1 the -- in the Universal Fund?</p> <p>2 A. Yes, to the extent that we invested some of</p> <p>3 our corporate available cash into the Universal</p> <p>4 Fund, like some of the other third-party investors,</p> <p>5 we would have returned, then, 18 or 17 percent,</p> <p>6 whatever the applicable interest would have been.</p> <p>7 Q. Okay. Thanks.</p> <p>8 And the deal documents laying out all of</p> <p>9 these -- this structure -- and just to sort of --</p> <p>10 and this is really just meant to summarize. There</p> <p>11 would be services agreements between First Bank of</p> <p>12 Delaware and TailWind and TCDS, servicing or</p> <p>13 licensing the -- the agreements, providing for the</p> <p>14 fees that -- the number 1 and 2 we just talked</p> <p>15 about. Right?</p> <p>16 MR. SCHEFF: Object to the form.</p> <p>17 You can answer if you can.</p> <p>18 A. Yes, there were -- there was a -- a</p> <p>19 marketing agreement between a Think Finance entity,</p> <p>20 TailWind Marketing and First Bank of Delaware.</p> <p>21 There was also a licensing and technology agreement</p> <p>22 between TC Decision Sciences and First Bank of</p> <p>23 Delaware.</p> <p>24 BY MR. ACKELSBURG:</p> <p>25 Q. And then there would be a participation</p>	<p style="text-align: right;">Page 75</p> <p>1 meetings or presentations. As you can appreciate as</p> <p>2 a CFO, I've made numerous, for lack of a better</p> <p>3 term, investment presentations or debt pitches over</p> <p>4 my 12 years as CFO at Elevate and at Think Finance.</p> <p>5 But I would assume that I would be somehow involved</p> <p>6 in helping Mark describe the program.</p> <p>7 BY MR. ACKELSBURG:</p> <p>8 Q. And I'm showing you a document --</p> <p>9 A. And by Mark, I meant Mark Wildstein.</p> <p>10 Q. Yes, I understand.</p> <p>11 And I'm showing you a document that was</p> <p>12 identified at the Wildstein deposition as P-3. Oh,</p> <p>13 and by the way, the -- just so you know, the -- how</p> <p>14 these numbers work, we -- there's something called</p> <p>15 "Bates numbers." You're familiar with that term?</p> <p>16 A. I'm not familiar. I heard it for the first</p> <p>17 time yesterday.</p> <p>18 Q. Okay. All right. So what you're going to</p> <p>19 see over the course of the day are some documents</p> <p>20 that we, the plaintiff, got from Mr. Wildstein, some</p> <p>21 documents that we got from Think Finance, some</p> <p>22 documents that we got from Victory Park, and they're</p> <p>23 going to have -- and then they're numbered in order.</p> <p>24 So what you're looking at is a document</p> <p>25 that was used in the Wildstein deposition and was</p>
<p style="text-align: right;">Page 74</p> <p>1 agreement between First Bank of Delaware and the</p> <p>2 Universal Fund, correct?</p> <p>3 A. Yes. Universal Fund II, there was a</p> <p>4 participation agreement.</p> <p>5 Q. Yes. And then there would be an</p> <p>6 administrative agency agreement and a guarantee</p> <p>7 agreement between Think and the Universal Fund</p> <p>8 entity?</p> <p>9 MR. SCHEFF: Object to the form.</p> <p>10 A. By "Think," I would refer specifically</p> <p>11 there was an administrative agency agreement between</p> <p>12 TCAS, which is a subsidiary of Think, and the</p> <p>13 Universal Fund II, and then a corporate guarantee --</p> <p>14 I don't recall, I'm assuming that the corporate</p> <p>15 guarantee would have been at the parent level or at</p> <p>16 the TC Loan Services level to Universal Fund II,</p> <p>17 yes.</p> <p>18 BY MR. ACKELSBURG:</p> <p>19 Q. Okay. All right. And you remember being</p> <p>20 involved a little bit in the -- in the marketing of</p> <p>21 the product to the -- to the investors, or at least</p> <p>22 providing a little bit of help to Mr. Wildstein?</p> <p>23 MR. SCHEFF: Object to the form.</p> <p>24 You can answer the question.</p> <p>25 A. I don't specifically recall any specific</p>	<p style="text-align: right;">Page 76</p> <p>1 identified as P-3. And you can see from the -- the</p> <p>2 numbering below that, the Bates numbering, that it's</p> <p>3 actually the -- it starts at page 504 of the</p> <p>4 documents we got from Mr. Wildstein, just so you</p> <p>5 understand the convention of how this works, the</p> <p>6 numbering of the documents. Okay?</p> <p>7 A. Okay.</p> <p>8 Q. All right. And so -- and so my question --</p> <p>9 my first question to you regarding this document is,</p> <p>10 do you recall participating in the creation of this</p> <p>11 document or documents like this?</p> <p>12 A. Can you give me one second to look at this</p> <p>13 document?</p> <p>14 Q. Sure.</p> <p>15 A. Thank you.</p> <p>16 (Reviews document.)</p> <p>17 MR. ACKELSBURG: And, also, if it --</p> <p>18 this is actually a document that we have from a</p> <p>19 variety of sources. We have a variety of copies,</p> <p>20 and if you want, I'll put up on the -- I'm going to</p> <p>21 put up on the screen TF-PA 504636.</p> <p>22 MR. SCHEFF: Are you sure it's</p> <p>23 identical? Just -- I just --</p> <p>24 MR. ACKELSBURG: I have no idea. I</p> <p>25 mean, you --</p>

<p style="text-align: right;">Page 77</p> <p>1 MR. SCHEFF: Well, let's not -- let's</p> <p>2 not --</p> <p>3 MR. ACKELSBURG: I think it's</p> <p>4 identical, but, I mean, we can --</p> <p>5 A. You don't need to put it up on the screen</p> <p>6 if I have a hard copy of this other document.</p> <p>7 BY MR. ACKELSBURG:</p> <p>8 Q. Yeah, I mean, we've also got one of these</p> <p>9 from Think Finance is what -- or it looks like it.</p> <p>10 A. Okay. Can you repeat your question now</p> <p>11 that I've had a chance to look at this?</p> <p>12 Q. Sure. Did you -- did you help prepare</p> <p>13 this -- this investor overview or, if not this one,</p> <p>14 similar ones for the marketing of the Universal</p> <p>15 Fund?</p> <p>16 MR. SCHEFF: Object to the form.</p> <p>17 A. I don't recall specifically preparing this</p> <p>18 or any. I think it's reasonable to assume as the</p> <p>19 CFO at ThinkCash at that time as part of this</p> <p>20 program, that I would have either been involved in</p> <p>21 helping prepare or at least explaining and involved</p> <p>22 maybe in the preparation, but I don't recall</p> <p>23 specifically.</p> <p>24 BY MR. ACKELSBURG:</p> <p>25 Q. And reviewing it to make sure it's properly</p>	<p style="text-align: right;">Page 79</p> <p>1 that's a -- in the financial area, that's a --</p> <p>2 that's a term you've heard of, right? It's a term</p> <p>3 you're familiar with?</p> <p>4 MR. SCHEFF: Object to the form.</p> <p>5 A. The term "waterfall," payment waterfall is</p> <p>6 a term that I'm familiar with. I, strangely, as a</p> <p>7 CFO rarely use it. So I would probably not have</p> <p>8 prepared this slide because I would -- as I recall,</p> <p>9 I don't think I've ever used the term "waterfall."</p> <p>10 But, yes, I am familiar with what the concept of</p> <p>11 what a waterfall refers.</p> <p>12 BY MR. ACKELSBURG:</p> <p>13 Q. And, basically, if this -- if the purpose</p> <p>14 of this slide is to help investors understand how</p> <p>15 the program functions, it -- it looks like this</p> <p>16 is -- this is, in part, to communicate how the --</p> <p>17 what you called the credit default swap function so</p> <p>18 as to alleviate concerns that investors might have</p> <p>19 about -- about the -- you know, the riskiness of</p> <p>20 this investment. That's kind of what this is</p> <p>21 directed towards, right?</p> <p>22 MR. SCHEFF: Object to the form.</p> <p>23 A. What this slide, from my -- from my</p> <p>24 perspective, is meant to depict is kind of the --</p> <p>25 the excess cash, the -- the amount of, you know,</p>
<p style="text-align: right;">Page 78</p> <p>1 describing the program for investors, that --</p> <p>2 A. I would say from my perspective, any</p> <p>3 presentation that I was asked to help with or make,</p> <p>4 I would be primarily focused on just looking at the</p> <p>5 slides related specifically to the finance aspect or</p> <p>6 the accounting aspect.</p> <p>7 Q. Okay. Fine.</p> <p>8 A. There may be other things related to the</p> <p>9 structure of the product that I'm not familiar with</p> <p>10 or other things, as you can appreciate.</p> <p>11 Q. Well, on the exhibit that you have before</p> <p>12 you, Exhibit 3, turn to slide No. 5. I would just</p> <p>13 ask if this is a slide where the information is --</p> <p>14 that's communicated on this slide is information</p> <p>15 that's familiar to you?</p> <p>16 A. Give me one quick minute to look at it</p> <p>17 again.</p> <p>18 (Reviews document.)</p> <p>19 After looking at this, yes, I think that</p> <p>20 this page kind of describes what I explained earlier</p> <p>21 in regards to how we would calculate the -- the</p> <p>22 amount of, for lack of a better term, credit default</p> <p>23 swap income at the end of every month related to</p> <p>24 Universal Fund II.</p> <p>25 Q. Okay. And the use of the term "waterfall,"</p>	<p style="text-align: right;">Page 80</p> <p>1 credit default swap income, excess cash flow,</p> <p>2 however you want to characterize it, you know, that</p> <p>3 in a normal environment, you know, on a regularly</p> <p>4 monthly basis potentially could, you know -- it's</p> <p>5 getting, you know, the -- the coverage that</p> <p>6 investors in looking at this could probably feel</p> <p>7 comfortable that there's an adequate amount of cash</p> <p>8 flow coming from the underlying loans, the</p> <p>9 90 percent participations in Universal Fund II to</p> <p>10 cover the loan losses, to, you know, pay the bank</p> <p>11 their, you know, revenue share, to pay the</p> <p>12 investors, which probably as a third-party investor</p> <p>13 would be most important, the 17 percent. The</p> <p>14 management fee and the -- the investment interest</p> <p>15 reserve.</p> <p>16 I think it's also, as this says, in</p> <p>17 parentheses, "In order of priority." Meaning that</p> <p>18 first and foremost, you know, losses are</p> <p>19 typically -- ever since I have been involved in</p> <p>20 Think Finance as the CFO, or even Elevate, or just</p> <p>21 other competitors, typically, losses are roughly</p> <p>22 about half of the APR or half the revenue.</p> <p>23 And so, you know, losses, first and</p> <p>24 foremost, come out of the cash flow. Then there's</p> <p>25 the bank. The bank wanted to make sure that they</p>

<p style="text-align: right;">Page 81</p> <p>1 were kind of after losses at the top of the</p> <p>2 waterfall to be paid. Again, probably from a</p> <p>3 regulatory perspective.</p> <p>4 And then third on that list would be the</p> <p>5 investors would get their 17 percent return, and</p> <p>6 then Mark Wildstein as the manager of the Universal</p> <p>7 Fund II would be entitled to his 1 percent to the</p> <p>8 extent that there was still cash flow available.</p> <p>9 And then fifth would be the investor</p> <p>10 interest reserve, which I vaguely remember that</p> <p>11 concept. I'm assuming that it was kind of, like,</p> <p>12 just a cash collateral, you know, that investors</p> <p>13 would always want to have set aside within that</p> <p>14 special purpose vehicle kind of some buffer cash or</p> <p>15 capital in case losses spike.</p> <p>16 And then the remaining amount of -- on a</p> <p>17 particular month, if there was a remaining amount of</p> <p>18 cash flow from a P&L perspective, that TCAS would be</p> <p>19 able to take that as its credit default swap or --</p> <p>20 or admin agency income. If it was negative, then</p> <p>21 TCAS would have to put in the same amount.</p> <p>22 BY MR. ACKELSBURG:</p> <p>23 Q. Now, before you mentioned interest rates</p> <p>24 north of 36. I mean, we're -- obviously, here, at</p> <p>25 least on this display, it appears to be describing</p>	<p style="text-align: right;">Page 83</p> <p>1 87 percent, depending on the maximum loan amount and</p> <p>2 the term of the -- and the term of the loan. Do you</p> <p>3 see that?</p> <p>4 MR. SCHEFF: Object to the form.</p> <p>5 A. You know, I -- like I said, I didn't</p> <p>6 prepare this particular side, so I really couldn't</p> <p>7 ascertain. . .</p> <p>8 BY MR. ACKELSBURG:</p> <p>9 Q. Well, let's just take --</p> <p>10 MR. SCHEFF: Were you done with your</p> <p>11 answer or --</p> <p>12 THE WITNESS: Yeah, I'm done with my</p> <p>13 answer there.</p> <p>14 A. I don't -- you know, I can't -- I don't</p> <p>15 know if this was the actual, you know, APRs, you</p> <p>16 know, that the bank was offering under the ThinkCash</p> <p>17 installment product. I know it's part of this</p> <p>18 presentation, but I --</p> <p>19 BY MR. ACKELSBURG:</p> <p>20 Q. Am I correct that during the entire --</p> <p>21 MR. SCHEFF: Let him finish his</p> <p>22 answer, Irv.</p> <p>23 BY MR. ACKELSBURG:</p> <p>24 Q. From the time that the --</p> <p>25 MR. SCHEFF: Irv, we've got a new</p>
<p style="text-align: right;">Page 82</p> <p>1 an average APR of 220 percent. Am I right?</p> <p>2 MR. SCHEFF: Object to the form;</p> <p>3 misstates the document.</p> <p>4 BY MR. ACKELSBURG:</p> <p>5 Q. That's what -- that's what this is</p> <p>6 basically saying, right?</p> <p>7 MR. SCHEFF: Object to the form;</p> <p>8 misstates the document.</p> <p>9 You can answer.</p> <p>10 A. Yeah, as I recall, when -- when you asked</p> <p>11 me the earlier question, what I wasn't familiar with</p> <p>12 was whether we had -- whether the bank offered the</p> <p>13 installment loans at varying interest rates. I</p> <p>14 would say looking at this, on average, a 220 percent</p> <p>15 APR for the average ThinkCash installment loan</p> <p>16 portfolio on a gross basis seems reasonable.</p> <p>17 BY MR. ACKELSBURG:</p> <p>18 Q. Okay. And, actually, if you'll turn to</p> <p>19 slide 11, there's more APR information to refresh</p> <p>20 your recollection. Slide 11.</p> <p>21 A. Sorry, I was looking at the 511 instead of</p> <p>22 the slide 11.</p> <p>23 Q. And so looking at slide 11, you'll see that</p> <p>24 in the same presentation, the APR, as you described,</p> <p>25 was variable with a high of 334 percent, a low of</p>	<p style="text-align: right;">Page 84</p> <p>1 agreement here. When he's talking, don't ask your</p> <p>2 question. Let him finish. He'll do the same with</p> <p>3 you. Okay?</p> <p>4 BY MR. ACKELSBURG:</p> <p>5 Q. When -- from the time of -- that the</p> <p>6 ThinkCash product began, soon after you arrived,</p> <p>7 until the time you left the company in 2014, am I</p> <p>8 right that there always was an installment loan</p> <p>9 product?</p> <p>10 MR. SCHEFF: Object to the form.</p> <p>11 A. As a third party -- actually, I would</p> <p>12 disagree with that statement because there were</p> <p>13 probably periods of time where we might not have</p> <p>14 been providing our services, being a service</p> <p>15 provider to either a third-party bank or a</p> <p>16 third-party tribe or some other third-party lender</p> <p>17 that would have offered an installment loan.</p> <p>18 Generally, over that period of time, I would agree,</p> <p>19 but there might have been a month or two. There</p> <p>20 were transitions in between products and in between</p> <p>21 programs.</p> <p>22 BY MR. ACKELSBURG:</p> <p>23 Q. You're talking about the period in 2010</p> <p>24 when the bank shut down originations? Is that what</p> <p>25 you're referring to?</p>

<p style="text-align: right;">Page 85</p> <p>1 A. No, that I'm referring to -- that's a broad 2 period of time, and I can't recall. But 3 generally -- I guess I'm generally agreeing with the 4 statement that, from my perspective, there was 5 probably from two-thousand- -- February of 2007 6 through when I left Think Finance as CFO at the end 7 of 2014, that there was probably always generally an 8 installment program that Think Finance was involved 9 with either as a direct lender or as a service 10 provider to some other -- 11 Q. And am I right -- 12 A. -- third-party originator. 13 Q. -- that all during that period, the average 14 APR on the installment loan product was north of 15 220 percent? 16 A. No, I would not agree with that statement. 17 The only thing that I can recall specifically is I 18 know for a -- from my perspective, we never had an 19 APR below 36 percent. As you can see even on this 20 particular schedule, which, again -- 21 Q. I'm just -- 22 A. -- I didn't prepare it, I don't know. 23 Q. Mr. Lutes. Mr. Lutes. 24 MR. SCHEFF: Let him finish. Don't 25 interrupt him, Irv.</p>	<p style="text-align: right;">Page 87</p> <p>1 be a reference to the average APR. And, in fact, 2 you're projecting into the future what an average 3 APR would be; am I right -- 4 MR. SCHEFF: Object to the form. 5 BY MR. ACKELSBURG: 6 Q. -- on those base forecasts? We can put one 7 up on the screen. I mean, I think that's -- I 8 didn't realize you would fight that. 9 MR. SCHEFF: Object to the form; 10 mischaracterization. You're asking him stupid 11 questions that are open-ended. Why don't you ask 12 him a specific question and show him a document if 13 you want to. 14 A. Irv, what you're asking me is to state that 15 the average APR was always north of 220 percent, if 16 I go back to your original question. I don't recall 17 if our average APR with bank installment loans or 18 tribal installment loans or any other products or 19 installment loans that we were involved with always 20 averaged on a blended basis greater than 21 220 percent. 22 What I know for a fact is, since I have 23 been the CFO at both Think Finance and at Elevate, 24 we have never lent to customers at an APR below 25 36 percent. That, I'm comfortable testifying to.</p>
<p style="text-align: right;">Page 86</p> <p>1 BY MR. ACKELSBURG: 2 Q. I'm not asking you for what individual -- 3 what individual borrowers paid on individual -- 4 that's not my question. Let me ask you another 5 question. 6 You prepared -- you're familiar with 7 something called the "base forecast"? Am I right? 8 You know -- you remember that, right? 9 MR. SCHEFF: Object to the form. 10 A. I have -- I'm familiar with the term 11 "base," and I'm familiar with the term "forecast," 12 but in -- I mean, I've prepared lots of forecasts 13 over time. 14 BY MR. ACKELSBURG: 15 Q. I'm talking about the base forecast that 16 every month you sent to Victory Park during tribal 17 period. You know what I'm talking about, don't you? 18 MR. SCHEFF: Well, then ask that 19 question, Irv. 20 A. Yeah, I'm familiar with forecast models 21 that I've sent to Victory Park, that I've sent to my 22 CEO and to others. I mean, we have prepared various 23 forecast models. 24 BY MR. ACKELSBURG: 25 Q. And one element of that base forecast would</p>	<p style="text-align: right;">Page 88</p> <p>1 MR. SCHEFF: Limit your answers to 2 Think Finance, not Elevate. Elevate is not part of 3 this lawsuit. 4 MR. ACKELSBURG: It certainly is. 5 MR. SCHEFF: No, it's not. 6 BY MR. ACKELSBURG: 7 Q. Let's talk about the transition from 8 Universal Fund to -- to tribal. Let's start in 9 the -- in the fall of -- actually, let's -- before 10 we get to there, there was a point in early -- in 11 the summer of 2010 when Victory Park took over 12 for -- for Universal Fund, right? 13 MR. SHAPIRO: Objection; form. 14 MR. SCHEFF: Object to the form. 15 BY MR. ACKELSBURG: 16 Q. You remember that? 17 A. No, I don't agree with that statement. 18 What happened in -- in July of 2010, the bank was 19 continuing to originate new installment loans, 20 ThinkCash installment loans to customers, and was 21 successful in doing that. They were having 22 trouble -- you know, it was growing so fast, that we 23 just couldn't find -- they couldn't find more 24 friends and family. I couldn't help provide any 25 more friends and family, you know, into the</p>

<p style="text-align: right;">Page 89</p> <p>1 Universal Fund II structure.</p> <p>2 And, you know, the bank and we at Think</p> <p>3 Fina- -- ThinkCash, you know, agreed that, you know,</p> <p>4 we needed -- and by this point, it was now the end</p> <p>5 of 2010. The financial crisis is starting to wind</p> <p>6 down. I think more sophisticated institutional</p> <p>7 lenders/investors were getting more comfortable</p> <p>8 coming back in and providing liquidity into the</p> <p>9 marketplace, and so we were able to -- and by "we,"</p> <p>10 we, us, ThinkCash and First Bank of Delaware -- were</p> <p>11 able to be put in touch through a third-party debt</p> <p>12 broker, for lack of a better term, with Victory Park</p> <p>13 Capital to come in and supplement with additional</p> <p>14 capital on top of or in excess of the existing</p> <p>15 investors in Universal Fund II.</p> <p>16 By no means did they come in and swap out</p> <p>17 and we make all of the existing friends and family</p> <p>18 go. Let's just use a number. If the original</p> <p>19 friends and family number was, say, 50 million,</p> <p>20 Victory Park Capital came in and, I think, provided</p> <p>21 initially, I'm going to guess, an incremental</p> <p>22 25 million in July of 2010. And I'm guessing as to</p> <p>23 the actual amount that they put in, but I do know</p> <p>24 that they came in, to your point, sometime of</p> <p>25 July 2010.</p>	<p style="text-align: right;">Page 91</p> <p>1 and my recollection of the deal structure, they</p> <p>2 wanted to create kind of their own SPV, kind of,</p> <p>3 like, a -- that would sit side by side, and that</p> <p>4 they would participate, for lack of a better term --</p> <p>5 and this will really sound really strange and -- as</p> <p>6 I recall, I had never really -- sub-participations</p> <p>7 of the participations.</p> <p>8 So the bank would continue to sell a</p> <p>9 90 percent participation to Universal Fund II, and</p> <p>10 Universal Fund II would then turn around and sell</p> <p>11 either a hundred percent or some -- some percentage</p> <p>12 of that participation to the SPV that Victory Park</p> <p>13 Capital set up.</p> <p>14 BY MR. ACKELSBURG:</p> <p>15 Q. Okay. So let's --</p> <p>16 A. But by no -- but I don't agree with the</p> <p>17 statement that they exerted control over -- over</p> <p>18 Universal Fund II.</p> <p>19 Q. All right. We'll talk about that later.</p> <p>20 Just let's -- let's just situate things. The summer</p> <p>21 of 2010, as of that point in time, Think Finance</p> <p>22 still has, basically, two products, the direct</p> <p>23 lending product, PDO, that's still happening at</p> <p>24 that -- as of summer 2010, right?</p> <p>25 A. In -- in 2010, we were still the direct</p>
<p style="text-align: right;">Page 90</p> <p>1 Q. And they came in at a -- at a premium,</p> <p>2 right? I mean, you had to pay them 20 percent</p> <p>3 compared to the 18 percent that you were paying to</p> <p>4 Universal Fund, right?</p> <p>5 MR. SHAPIRO: Object to form.</p> <p>6 MR. SCHEFF: Object to the form.</p> <p>7 A. I -- I don't recall the specific interest</p> <p>8 rate. If you have a document that shows me, I can</p> <p>9 verify that.</p> <p>10 BY MR. ACKELSBURG:</p> <p>11 Q. Well, all right. Would it be fair to say</p> <p>12 that Victory Park exerted more control over the --</p> <p>13 over the structure over the program than</p> <p>14 Mr. Wildstein had?</p> <p>15 MR. SHAPIRO: Objection; form.</p> <p>16 A. I absolutely disagree with that statement.</p> <p>17 Victory Park Capital came in really under the</p> <p>18 existing general terms and structures of the</p> <p>19 product. They created, as you can appreciate, being</p> <p>20 a more sophisticated institutional investor/lender.</p> <p>21 They -- as I recall, they did not want to put their</p> <p>22 money directly into the Universal Fund II SPV along</p> <p>23 with all of these friends and family</p> <p>24 less-sophisticated lenders/investors.</p> <p>25 They got the advice, from my perspective</p>	<p style="text-align: right;">Page 92</p> <p>1 lender for a payday product, correct.</p> <p>2 Q. And you still -- and then you had -- you</p> <p>3 had -- and your service provider for the -- for the</p> <p>4 ThinkCash installment loan product originated by</p> <p>5 First Bank of Delaware, right?</p> <p>6 A. Yes, we were the -- the service providers</p> <p>7 we've discussed.</p> <p>8 Q. And at that point in time, in the summer of</p> <p>9 2010, as you described, the -- the participation was</p> <p>10 supplied by some combination of the old Universal</p> <p>11 Fund and some new SPV that Victory Park had put</p> <p>12 together?</p> <p>13 MR. SCHEFF: Object to the form.</p> <p>14 A. And if you don't mind, if I can interrupt</p> <p>15 on -- on one point, or just clarify, I believe in</p> <p>16 2009 -- 2009, 2010, we had also began a partnership</p> <p>17 with another bank, Irving Trust Bank, in terms of</p> <p>18 offering a line of credit product. I believe it was</p> <p>19 called Elastic with Irving Trust Bank. So it was a</p> <p>20 similar type of structure and relationship but a</p> <p>21 different product, different bank in -- I'm going to</p> <p>22 guess, late 2009, end of 2010.</p> <p>23 BY MR. ACKELSBURG:</p> <p>24 Q. Was Victory Park involved in the Elastic</p> <p>25 product?</p>

<p style="text-align: right;">Page 93</p> <p>1 MR. SHAPIRO: Objection; form.</p> <p>2 A. I don't -- I don't recall. I really -- I</p> <p>3 can't remember.</p> <p>4 BY MR. ACKELSBURG:</p> <p>5 Q. All right. And then -- and then at some</p> <p>6 point -- well, strike that.</p> <p>7 Once Victory Park entered -- entered the</p> <p>8 scene on the participation side of the ThinkCash</p> <p>9 product, that actually -- it was only within months</p> <p>10 that the FDIC told the -- told the bank to stop</p> <p>11 originations altogether; am I right?</p> <p>12 MR. SCHEFF: Object to the form.</p> <p>13 A. No, you're --</p> <p>14 MR. SCHEFF: Lacks foundation.</p> <p>15 A. No, you're -- I'll answer the question.</p> <p>16 No, you're not right in that statement. To my</p> <p>17 knowledge, the FDIC never told the bank to stop</p> <p>18 originating the ThinkCash product. My</p> <p>19 understanding, and I don't have direct knowledge,</p> <p>20 but my understanding was what was communicated to</p> <p>21 us -- and "us" would probably be from Alonzo Primus</p> <p>22 to Ken Rees as CEO, was that the board of directors</p> <p>23 and First Bank of Delaware and Alonzo as CEO of</p> <p>24 First Bank of Delaware had decided on their own to</p> <p>25 stop originating the ThinkCash installment loan</p>	<p style="text-align: right;">Page 95</p> <p>1 A. I would say, from my perspective, as</p> <p>2 executives, we're always evaluating new product</p> <p>3 innovations. As I mentioned earlier, you know,</p> <p>4 sometime in late 2009, 2010 we had rolled out a line</p> <p>5 of credit product where we partnered with Irving</p> <p>6 Trust Bank and them rolling out a line of credit</p> <p>7 product.</p> <p>8 So there was always discussions related to</p> <p>9 new products going on. I do recall, you know, in</p> <p>10 the fall of 2010 -- because first it was Irving</p> <p>11 Trust Bank in August of 2010, and then subsequently</p> <p>12 First Bank of Delaware later -- a few months later,</p> <p>13 you know, both informing us that -- that they had</p> <p>14 chosen on their own to no longer, you know,</p> <p>15 originate their products by the end of 2010.</p> <p>16 So we, as an executive team -- I don't</p> <p>17 know when the meeting happened, whether it was on a</p> <p>18 weekend or just during the normal course of -- it</p> <p>19 would have been the fall of 2010, you know, got</p> <p>20 together to continue to strategize on what other,</p> <p>21 you know, new products, opportunities we could do.</p> <p>22 I know, for instance, one of the things we</p> <p>23 looked at was -- at the time, there was a lot of</p> <p>24 online lending happening in the UK. So, you know,</p> <p>25 we -- that was certainly something we considered.</p>
<p style="text-align: right;">Page 94</p> <p>1 product --</p> <p>2 BY MR. ACKELSBURG:</p> <p>3 Q. All right. But whoever --</p> <p>4 A. -- as of 12/31/2010.</p> <p>5 Q. Right. So whoever -- whoever made the</p> <p>6 decision, however that happened, on the First Bank</p> <p>7 of Delaware end, it was communicated to Ken Rees</p> <p>8 that the bank was no longer going to be buying --</p> <p>9 was no longer going to be originating loans as of</p> <p>10 the end of 2010. That's what you remember?</p> <p>11 MR. SCHEFF: Object to the form.</p> <p>12 A. Yes, what I recall being informed of was</p> <p>13 sometime in late fall of -- of 2010, that the bank</p> <p>14 had informed -- "the bank" probably being Alonzo as</p> <p>15 the CEO -- had informed Ken Rees that effective</p> <p>16 December 31, 2010 -- or really effective January 1,</p> <p>17 2011, that the bank would no longer originate</p> <p>18 ThinkCash installment loans.</p> <p>19 BY MR. ACKELSBURG:</p> <p>20 Q. And there was some earlier testimony about</p> <p>21 an executive offsite in either the end of October,</p> <p>22 beginning of November 2010, where the executives</p> <p>23 gathered to begin to figure out what the next move</p> <p>24 for Think Finance would be with regard to the</p> <p>25 installment loan product; am I right?</p>	<p style="text-align: right;">Page 96</p> <p>1 And we ultimately did, I do recall, going out in</p> <p>2 November of 2010, and we ended up acquiring a small</p> <p>3 entity that did online lending and completed that</p> <p>4 transaction by the end of 2010.</p> <p>5 We looked at a rent-to-own product. We</p> <p>6 looked at a prepaid card product. There were a</p> <p>7 variety of products we were looking in that time, as</p> <p>8 well as just, you know, figuring out -- or looking</p> <p>9 at, you know, other installment-type products as</p> <p>10 well as, you know, what we could continue to do as a</p> <p>11 direct lender.</p> <p>12 Q. At this point in time, the installment loan</p> <p>13 product was the biggest revenue source for the</p> <p>14 company; am I right?</p> <p>15 MR. SCHEFF: Object to the form.</p> <p>16 A. As I recall, the -- I don't know specific</p> <p>17 dollar amounts or percentages, but I think it's</p> <p>18 reasonable to assume that the -- that the ThinkCash</p> <p>19 installment product was the -- the largest product</p> <p>20 from a revenue generations standpoint.</p> <p>21 BY MR. ACKELSBURG:</p> <p>22 Q. And so from a revenue generation</p> <p>23 standpoint, the executives needed to figure out how</p> <p>24 to -- if that revenue was going to go down, how to</p> <p>25 replace that revenue. That's -- that's what</p>

<p style="text-align: right;">Page 97</p> <p>1 executives do, right?</p> <p>2 MR. SCHEFF: Object to the form.</p> <p>3 You can answer the question.</p> <p>4 A. As I said earlier, I mean, as executives,</p> <p>5 we're always looking for new products to try and</p> <p>6 grow revenue. So, certainly, when you lose, you</p> <p>7 know -- or when a product that you're providing</p> <p>8 services for, you know, is going to have origination</p> <p>9 stopped and potentially that fee revenue, you know,</p> <p>10 slow down and eventually potentially go away, yeah,</p> <p>11 you're always looking for new products.</p> <p>12 BY MR. ACKELSBURG:</p> <p>13 Q. And when the executives gathered to discuss</p> <p>14 those kind of issues, who would generally be there?</p> <p>15 MR. SCHEFF: Who was there at this</p> <p>16 particular meeting, or you're just talking about</p> <p>17 all --</p> <p>18 BY MR. ACKELSBURG:</p> <p>19 Q. If you -- if you --</p> <p>20 MR. SCHEFF: -- for the last six</p> <p>21 years?</p> <p>22 BY MR. ACKELSBURG:</p> <p>23 Q. -- remember the particular meeting, that's</p> <p>24 fine.</p> <p>25 A. I don't remember the particular meeting.</p>	<p style="text-align: right;">Page 99</p> <p>1 lead a weekly or monthly executive meeting.</p> <p>2 Q. How long have you worked for Mr. Rees?</p> <p>3 A. Since January 2007.</p> <p>4 Q. And you're still working for him today at</p> <p>5 Elevate, right?</p> <p>6 A. Yes, I still report directly to Ken Rees.</p> <p>7 Q. Okay. How would you describe his</p> <p>8 leadership style?</p> <p>9 A. Well, that's -- from my perspective, that's</p> <p>10 a pretty subjective question. Let's put it this</p> <p>11 way, the fact that I have been the CFO for Ken</p> <p>12 pretty much over a 12-year period, speaks very</p> <p>13 highly of -- I enjoy working with him.</p> <p>14 Q. He's an effective leader --</p> <p>15 MR. SCHEFF: Object to the form.</p> <p>16 BY MR. ACKELSBURG:</p> <p>17 Q. -- in your subjective judgment?</p> <p>18 MR. SCHEFF: Object to the form.</p> <p>19 You can answer the question.</p> <p>20 A. Yes, I find Ken a very effective leader.</p> <p>21 BY MR. ACKELSBURG:</p> <p>22 Q. Is he someone that holds -- holds the other</p> <p>23 executives accountable to do their jobs?</p> <p>24 MR. SCHEFF: Object to the form.</p> <p>25 A. Yes, he holds people accountable.</p>
<p style="text-align: right;">Page 98</p> <p>1 But, generally, as executives, we met once a week to</p> <p>2 discuss performance of existing products to</p> <p>3 strategize and discuss new products, new other</p> <p>4 opportunities. I mean, we talked with large banks.</p> <p>5 I mean, there's --</p> <p>6 Q. Who would -- who would generally run those</p> <p>7 meetings?</p> <p>8 MR. SCHEFF: Can you let him finish</p> <p>9 his answers, plea, Irv? You do this repeatedly.</p> <p>10 I've asked you not to. Let him finish his answers</p> <p>11 and then ask your next question.</p> <p>12 A. Members of the executive management team</p> <p>13 would attend the executive --</p> <p>14 BY MR. ACKELSBURG:</p> <p>15 Q. I didn't say who would attend. I said, who</p> <p>16 would lead the meetings?</p> <p>17 A. Oh. Lead is -- Ken Rees, for lack of a</p> <p>18 better term, would lead -- as CEO would lead the</p> <p>19 meeting. But, you know, in terms of actually</p> <p>20 leading, I mean there was -- the agenda varied from</p> <p>21 time to time, and, you know, I would present -- if</p> <p>22 it was the end of the month or beginning of the</p> <p>23 month, I would present a financial update. You</p> <p>24 know, there were lots of things. But Ken Rees, as</p> <p>25 CEO, clearly, like any other company, would probably</p>	<p style="text-align: right;">Page 100</p> <p>1 BY MR. ACKELSBURG:</p> <p>2 Q. Occasionally expressing displeasure at</p> <p>3 performance when it doesn't meet his standards?</p> <p>4 MR. SCHEFF: Object to the form.</p> <p>5 A. From my perspective, no. I think as</p> <p>6 executives, we always hold ourselves to a very high</p> <p>7 standard, and, generally, we collectively are</p> <p>8 equally, you know, disappointed when we're, you</p> <p>9 know, not performing as expected and equally happy</p> <p>10 when we're performing better than expected.</p> <p>11 BY MR. ACKELSBURG:</p> <p>12 Q. I'm familiar with some organizations where</p> <p>13 CEOs aren't around much, don't -- don't really</p> <p>14 involve themselves much in what's happening. Would</p> <p>15 you regard him as more hands-on or less -- or less</p> <p>16 personally involved?</p> <p>17 A. No, Ken -- Ken, is my opinion, a hands on</p> <p>18 CEO.</p> <p>19 Q. He knows what's going on in the company?</p> <p>20 MR. SCHEFF: Object to the form.</p> <p>21 A. That's kind of a broad statement, he -- he</p> <p>22 knows.</p> <p>23 BY MR. ACKELSBURG:</p> <p>24 Q. For strategic -- strategic decisions of the</p> <p>25 company, Ken Rees is at the table and making his</p>

<p style="text-align: right;">Page 101</p> <p>1 opinions known to his -- to the other executives; am 2 I right?</p> <p>3 MR. HERMAN: Objection; form.</p> <p>4 MR. SCHEFF: Object to the form.</p> <p>5 A. As -- as CEO of -- when I've worked with 6 Ken CEO, yes, he is involved in the strategic 7 decisions of the company, and he involves a lot of 8 us other executives as well. Not all of the ideas 9 are his. He's open. But he's definitely involved 10 from a strategy standpoint of running the company. 11 BY MR. ACKELSBURG:</p> <p>12 Q. Now, what do you remember about the -- so 13 we know that by the spring of 2011, there were 14 tribal contracts in place. Right? Right?</p> <p>15 MR. HERMAN: Objection; form.</p> <p>16 A. By the spring of 2011, we had entered into 17 agreements as the service provider for one tribe 18 that I'm aware of, the Chippewa Cree.</p> <p>19 BY MR. ACKELSBURG:</p> <p>20 Q. Right. And that eventually became three 21 tribes, right?</p> <p>22 A. Eventually, we entered into agreements with 23 two additional tribes during the -- that same 24 two-thousand-and -- time -- time span with the 25 Otoe-Missouria, I believe in, roughly, I'm going to</p>	<p style="text-align: right;">Page 103</p> <p>1 banks, we can partner -- partner as a service 2 provider with other third-party lenders. We could 3 partner as a service provider with tribes. I mean, 4 there was a variety of ways that we could use the 5 marketing and technology skills that we possessed to 6 either do direct lending or to partner with other 7 third-party lenders, whoever they may be.</p> <p>8 BY MR. ACKELSBURG:</p> <p>9 Q. Well, at some point a decision was made to 10 pursue a tribal partner during this period, the end 11 of 2010; am I right?</p> <p>12 MR. SCHEFF: Object to the form.</p> <p>13 A. I can't recall if it was -- and by -- we 14 were certainly exploring partnering with tribes in 15 the fall of 2010 into the spring of -- spring, first 16 quarter of 2011.</p> <p>17 BY MR. ACKELSBURG:</p> <p>18 Q. As the CFO, were you the -- I assume you 19 were involved in the communications with Victory 20 Park during this period of time?</p> <p>21 A. Well, I'm always involved in the -- in the 22 discussions as CFO with -- with Victory Park, 23 typically, on a once-a-month basis to at least 24 report the financial performance.</p> <p>25 I would have been involved in the</p>
<p style="text-align: right;">Page 102</p> <p>1 guess, the July, August 2011 time span, and then we 2 also entered into service provider agreements with 3 the Tunica-Biloxi tribe in, roughly, the September, 4 October, November 2011 time span.</p> <p>5 Q. Right. So what I focus on is the -- is the 6 process going on within the company, between the 7 time you learned that -- that there would be no more 8 originations by the bank, and -- and the 9 identification of tribal partners, I mean, first 10 there had to have been a decision to -- to explore 11 the tribal option, right?</p> <p>12 MR. SCHEFF: Object to the form.</p> <p>13 BY MR. ACKELSBURG:</p> <p>14 Q. You remember that happening?</p> <p>15 MR. SCHEFF: Object to the form.</p> <p>16 A. My understanding -- and I wasn't actively 17 involved. I mean, some of this even predates me. I 18 think tribal lending had gone on prior to -- not 19 with us, but there had been tribal lending, you 20 know, as far back prior to 2007. And it's quite 21 possible that the company had looked at it then.</p> <p>22 So, I mean, that's -- you know, it was one 23 form of, you know, for lack of a better term, 24 regulatory distribution diversification, similar to 25 we can be a direct lender, we can partner with</p>	<p style="text-align: right;">Page 104</p> <p>1 discussions that we probably had in the fall of 2010 2 with Victory Park, appreciating that they were new, 3 that they had really just come on board and began 4 lending -- or purchasing participations through 5 Universal Fund II in July of 2010, was first 6 informing them of First Bank of Delaware's decision 7 to stop originating loans at the end of 2010, and 8 then to, you know, potentially discuss with them 9 other new opportunities. For instance, as I had 10 mentioned earlier, you know, we were looking at and 11 we ended -- did end up acquiring a UK online lending 12 entity, and we needed financing potentially for 13 that.</p> <p>14 Q. All right. Well, we're not talking about 15 the UK today. We're just talking about --</p> <p>16 A. Well, but your question was, you know, do I 17 talk. I talk to them about a variety of things.</p> <p>18 Q. I understand. But I really want to -- I 19 really want to talk about the development of the 20 tribal products. And so do you remember 21 consulting -- or the company consulting with Victory 22 Park about the tribal option during this period of 23 time?</p> <p>24 MR. SHAPIRO: Object to form.</p> <p>25 MR. SCHEFF: Object to the form.</p>

<p style="text-align: right;">Page 105</p> <p>1 A. I recall two conversations vaguely. The</p> <p>2 first was with Ken Rees, the CEO, sometime in</p> <p>3 probably the fall of 2010 just saying that, you</p> <p>4 know: Ken, as we explore, you know -- and I'll just</p> <p>5 limit this specifically with tribal, but I would</p> <p>6 have this type of discussion with him regarding any</p> <p>7 potential new product. You know: Ken, we've</p> <p>8 also -- it's great if we can find a third-party</p> <p>9 lender, whoever that may be, bank, tribe, other</p> <p>10 licensed third-party lender, to offer services to,</p> <p>11 but from my perspective, you know, whoever we end up</p> <p>12 providing service -- you know, entering into a</p> <p>13 service relationship with, they're probably going to</p> <p>14 be capital constrained, banks are capital</p> <p>15 constrained, other third-party lenders, that we're</p> <p>16 going to need to have a funding source. "We"</p> <p>17 collectively being whoever is originating the loans</p> <p>18 as well as us as the service provider, we're going</p> <p>19 to have to find somebody that's going to be willing</p> <p>20 to purchase participations from the originator of</p> <p>21 those loans.</p> <p>22 So I do recall in the fall/winter of 2010</p> <p>23 discussing with Ken Rees that if we do explore</p> <p>24 tribal -- if we do explore -- you know, if we enter</p> <p>25 in -- "explore" is the wrong word.</p>	<p style="text-align: right;">Page 107</p> <p>1 official title is. But just saying, you know --</p> <p>2 again, reiterating how the bank hasn't changed its</p> <p>3 mind, you know, they're still going to stop</p> <p>4 originating the installment loans effective January</p> <p>5 1, 2011.</p> <p>6 You know, one of the things that we are --</p> <p>7 "we," ThinkCash, Think Finance -- are looking at is</p> <p>8 offering our services to third-party tribes, tribal</p> <p>9 lenders: Would you be interested in providing</p> <p>10 funding liquidity for purchasing participations</p> <p>11 from, whether it be installment loans or lines of</p> <p>12 credit, that tribes would originate?</p> <p>13 Q. And do you remember in that conversation or</p> <p>14 in subsequent conversations with Victory Park, them</p> <p>15 sharing with you their -- their own experience with</p> <p>16 other service providers that were in deals with</p> <p>17 Indian tribes?</p> <p>18 MR. SCHEFF: Object to the form.</p> <p>19 MR. SHAPIRO: Object to form.</p> <p>20 A. I don't recall having a conversation with</p> <p>21 them or them bringing up any expertise that they had</p> <p>22 in doing that. Whether they were looking at it at</p> <p>23 the time, I don't know. I don't recall.</p> <p>24 BY MR. ACKELSBURG:</p> <p>25 Q. So before a tribe was identified, I assume</p>
<p style="text-align: right;">Page 106</p> <p>1 If we enter into a service relationship</p> <p>2 with a tribe before finalizing that agreement, we</p> <p>3 need to work with the tribe and make sure that</p> <p>4 either Victory Park Capital or some other</p> <p>5 third-party lender is going to be comfortable</p> <p>6 providing lending funds into an SPV to purchase</p> <p>7 participations from the tribe.</p> <p>8 BY MR. ACKELSBURG:</p> <p>9 Q. And what's the other conversation you</p> <p>10 remember?</p> <p>11 A. The second conversation is after I just</p> <p>12 reminded him that, you know, this as great as our --</p> <p>13 as great as our services are and we can find all</p> <p>14 the, you know, third-party originators in the world,</p> <p>15 if you can't find somebody to buy the -- you know,</p> <p>16 buy a large amount of the participations, you know,</p> <p>17 you really don't have a product to offer or a</p> <p>18 service to provide because they're not going to be</p> <p>19 able to originate the loans.</p> <p>20 So then shortly thereafter, as we became</p> <p>21 more interested in potentially finalizing a deal</p> <p>22 with the tribes, I remember a call that Ken and I</p> <p>23 had with, I believe, Richard Levy at Victory Park</p> <p>24 Capital. Richard, I think, for lack of a better</p> <p>25 term, is the head CEO. I'm not sure what his</p>	<p style="text-align: right;">Page 108</p> <p>1 as CFO you would have -- you would have had to start</p> <p>2 conceptualizing how the program would work if you</p> <p>3 were successful in identifying a tribe and if</p> <p>4 Victory Park was willing to provide the</p> <p>5 participation funding. Am I right?</p> <p>6 A. Actually, no, I would disagree with that</p> <p>7 statement. Really, what we, as a service provider,</p> <p>8 felt comfortable with was the structure, kind of</p> <p>9 replicating the same existing structure that we had</p> <p>10 in place with First Bank of Delaware and with Irving</p> <p>11 Trust Bank. We felt that that had gone through</p> <p>12 numerous regulatory exams.</p> <p>13 From our perspective, my perspective, as I</p> <p>14 recollect, the FDIC never formally told either of</p> <p>15 those banks: No, you cannot, you know, originate</p> <p>16 these types of loans under the structure.</p> <p>17 As I mentioned earlier, I felt that a lot</p> <p>18 of the changes that we had made as the program, with</p> <p>19 the First Bank of Delaware, in particular, evolved,</p> <p>20 it came at the recommendation of the FDIC.</p> <p>21 So as the CFO, you know, what I remember</p> <p>22 communicating to Ken and the other execs is I</p> <p>23 literally believe that from an accounting</p> <p>24 perspective, we could replicate the existing</p> <p>25 structure as we go to work tribal lenders or even</p>

<p style="text-align: right;">Page 109</p> <p>1 other third-party type of lenders.</p> <p>2 What I was primarily focused with is</p> <p>3 providing the funding. And as part of your</p> <p>4 question, if Victory Park Capital agreed to come</p> <p>5 over and buy participations from tribal lenders or</p> <p>6 any other third-party lenders that we may have</p> <p>7 identified to originate loans, you know, that</p> <p>8 certainly helps from a funding perspective.</p> <p>9 Q. Sure.</p> <p>10 MR. ACKELSBURG: I want to show you a</p> <p>11 document which I am going to identify as Plaintiff's</p> <p>12 Exhibit 243.</p> <p>13 (Exhibit No. 243 marked.)</p> <p>14 BY MR. ACKELSBURG:</p> <p>15 Q. And I am going to represent to you that --</p> <p>16 that we actually got several -- several copies of</p> <p>17 this document. The one I am showing you, according</p> <p>18 to the metadata, it does not have a date but it has</p> <p>19 you as the author on the metadata.</p> <p>20 MR. SCHEFF: Is this attached to an</p> <p>21 e-mail?</p> <p>22 MR. ACKELSBURG: No.</p> <p>23 MR. SCHEFF: It's not? It just a</p> <p>24 stand-alone document?</p> <p>25 MR. ACKELSBURG: Uh-huh (affirmative</p>	<p style="text-align: right;">Page 111</p> <p>1 I've never met him, and I was not involved in any of</p> <p>2 those discussions.</p> <p>3 Q. Okay. All right. Do --</p> <p>4 A. So I'm not -- I'm not sure who had those</p> <p>5 discussions.</p> <p>6 Q. So, ultimately, the -- the special purpose</p> <p>7 vehicle that funded the tribal lending was something</p> <p>8 called GPLS or GPL Servicing Limited, right?</p> <p>9 A. Yes. The -- the purchaser of the</p> <p>10 participations from all three tribes that we</p> <p>11 ultimately ended up partnering with, providing</p> <p>12 services to, was GPLS.</p> <p>13 Q. And do you remember how that -- where that</p> <p>14 name came from?</p> <p>15 A. As I recall, for -- for -- it -- I think it</p> <p>16 was just an acronym, really, for Great Plains</p> <p>17 Lending.</p> <p>18 Q. Right.</p> <p>19 A. And I don't know what the "S" would have</p> <p>20 stood for at the end.</p> <p>21 Q. So the original concept, the original</p> <p>22 product as conceived -- before there were any</p> <p>23 contracts with anybody, the original concept was</p> <p>24 called Great Plains Lending within -- within the</p> <p>25 company, within Think Finance. You remember that</p>
<p style="text-align: right;">Page 110</p> <p>1 response).</p> <p>2 A. Can I take a minute to read it?</p> <p>3 BY MR. ACKELSBURG:</p> <p>4 Q. Of course.</p> <p>5 A. (Reviews document.)</p> <p>6 Okay.</p> <p>7 Q. Do you remember this document?</p> <p>8 A. I don't specifically remember it, but. . .</p> <p>9 Q. Okay. So do you remember there was a point</p> <p>10 in the discussions with potential tribes that a --</p> <p>11 the Otoe-Missouria were identified early on; do you</p> <p>12 remember that?</p> <p>13 MR. SCHEFF: Object to the form.</p> <p>14 A. I do recall that one of the tribes in late</p> <p>15 2010, early 2011, that we were considering</p> <p>16 partnering with was the Otoe-Missouria tribe.</p> <p>17 BY MR. ACKELSBURG:</p> <p>18 Q. And when you were having discussions with</p> <p>19 them, your discussions were actually with an</p> <p>20 intermediary organization led by someone named Mark</p> <p>21 Curry, right?</p> <p>22 MR. SCHEFF: Object to the form.</p> <p>23 BY MR. ACKELSBURG:</p> <p>24 Q. Do you remember that?</p> <p>25 A. I'm familiar with the name Mark Curry.</p>	<p style="text-align: right;">Page 112</p> <p>1 period, right?</p> <p>2 MR. SCHEFF: Object to the form.</p> <p>3 A. Yes, I believe in the fourth quarter of</p> <p>4 2010, as we started to think about, you know, how to</p> <p>5 brand -- and I wasn't actively involved, but I</p> <p>6 remember as an executive -- because it would have</p> <p>7 been presented, like, at the weekly executive</p> <p>8 meeting -- that there was probably a presentation</p> <p>9 where if we're going to partner with a third-party</p> <p>10 tribe -- and I believe at the time probably one of</p> <p>11 the first ones we looked at was the Otoe-Missouria.</p> <p>12 But regardless, whoever it was, the initial branding</p> <p>13 concept was Great Plains Lending, you know, because</p> <p>14 we did not want to -- we couldn't use ThinkCash.</p> <p>15 That belonged to First Bank of Delaware. Couldn't</p> <p>16 use whatever the product name was with Irving Trust</p> <p>17 Bank. So we had to, as marketer, come up with a</p> <p>18 potential brand name that whatever tribe we ended up</p> <p>19 partnering with, you know, would adopt and agree to.</p> <p>20 BY MR. ACKELSBURG:</p> <p>21 Q. Okay. And eventually -- eventually,</p> <p>22 though, the initial -- the initial -- the initial</p> <p>23 contract was the actual contract signed -- signed</p> <p>24 and sealed was with a different tribe, the Chippewa</p> <p>25 Cree; am I right?</p>

<p style="text-align: right;">Page 113</p> <p>1 A. I'll rephrase that question. I mean, from 2 my perspective, the first tribe that we began 3 providing services to was the Chippewa Cree, and I 4 believe that would have been in the April 5 two-thousand- -- May 2011 time span. 6 Q. I'm curious why you corrected the -- what 7 was in my question that was -- that -- 8 A. You said that that was -- I just wanted to 9 clarify. I might have misheard your question. I 10 apologize. The first tribe that we officially -- 11 Q. Partnered with. 12 A. -- partnered with was the Chippewa Cree, 13 yes. 14 Q. Okay. And do you remember the reasons for 15 the switch from the -- the Otoe-Missouria to the -- 16 to the Chippewa Cree? 17 MR. SCHEFF: Object to the form. 18 A. No, that -- I wasn't involved in those 19 discussions. 20 BY MR. ACKELSBURG: 21 Q. The -- so with -- there was this existing 22 customer portfolio at ThinkCash from the ThinkCash 23 product, right? 24 MR. SCHEFF: Object to the form. 25 A. I would not say that they were necessarily</p>	<p style="text-align: right;">Page 115</p> <p>1 that's a term you've heard of, hasn't -- isn't it? 2 MR. SCHEFF: Object to the form. 3 A. Yes. I mean, we -- we use that metric 4 throughout the company in terms of, you know, when 5 we define a new customer, it's, you know, kind of 6 what it says, a loan to -- you know, a first-time 7 loan to a new customer. That does not specifically 8 mean -- because we're a lot of times providing the 9 reporting to third-party, you know, banks or other 10 lenders. 11 If we used "customer," it doesn't 12 necessarily mean that it's our customer. It's a 13 generic term to reply from a reporting standpoint 14 whether we as the direct lender, it would be truly a 15 first-time loan to our new customer, or if we were 16 the service provider to a bank, to a tribe or some 17 other third-party lender, the term "new customer," 18 if we use it on our own reports, it's to help them 19 identify that from their perspective, it's a new 20 customer, not necessarily to imply that it's 21 technically our customer. 22 BY MR. ACKELSBURG: 23 Q. So the -- 24 A. And -- I'm sorry, let me finish, because 25 the second part of your question was former.</p>
<p style="text-align: right;">Page 114</p> <p>1 our customers. They were the bank's customers. The 2 bank had originated the loans to those customers. 3 We just provided third-party services to the bank to 4 help them originate those loans. 5 BY MR. ACKELSBURG: 6 Q. And am I also -- so is it correct that in 7 any -- in any of the products, any of the Think's 8 products, whether it's service provider product, the 9 direct lending product, the existing customers are 10 viewed as potential customers for future -- future 11 loans? 12 A. I don't recall specifically, you know, 13 whether in the marketing agreements we, you know, 14 inserted legal to -- you know, legal language that 15 gave us the right to potentially market -- you know, 16 if we offered marketing services to some other 17 third-party originator. I don't -- I don't 18 really -- that's not really a financial matter. 19 It's more of a marketing matter to me. 20 Q. I'm sorry, I mean, I thought -- I thought 21 you were kind of more involved than maybe you are. 22 But I've been immersed in all of this material for 23 months, and one of the things that I have seen is a 24 distinction between new and existing customers or 25 new and former customers or things -- that's --</p>	<p style="text-align: right;">Page 116</p> <p>1 A former customer would imply that that 2 would be a customer that had already paid off 3 their -- their loan either directly to us if we were 4 the direct lender or to the third-party originating 5 bank or third-party tribe if they were the 6 originating lender, and then that third-party 7 originator or us turned around and made a second 8 loan to the customer. 9 Q. Now, you're aware, are you not, that 10 Think -- ThinkCash customers, when it was still 11 First Bank of Delaware, if they wanted former 12 customers, if they wanted to return and get another 13 loan, they could just log onto the website and apply 14 for another loan, right? That's -- that's the way 15 the platform -- the platform allowed that; am I 16 right? 17 MR. SCHEFF: Object to the form. 18 A. It gets a little bit outside of my 19 expertise because I'm not really that familiar with 20 the customer flow from a website design and -- and 21 whatnot. But I guess maybe rephrase the question. 22 What you're trying to ask me to really answer is, is 23 that is it -- rephrase the question. 24 BY MR. ACKELSBURG: 25 Q. At the end of 2010, it was a matter of some</p>

<p style="text-align: right;">Page 117</p> <p>1 urgency to have a place to send existing or former 2 ThinkCash customers who might be in the market for a 3 new -- a new installment loan; am I right? 4 MR. SCHEFF: Object to the form. 5 A. I wouldn't agree with that question or 6 phrase. From my perspective, the bank had decided 7 to stop originating installment loans effective 8 January 1, 2011, to their customers. We, as the 9 service provider, you know, we're certainly looking 10 to provide our services to other third-party tribes 11 or other third-party licensed lenders. 12 BY MR. ACKELSBERG: 13 Q. And to replace the revenue, it would be -- 14 MR. SCHEFF: I don't think he was 15 finished answering the question. 16 A. Yeah, I wasn't finished. I wasn't 17 finished. Because you were saying that there was a 18 sense of urgency -- or you were implying that there 19 was a sense of urgency to move ThinkCash customers 20 somewhere else. 21 No, I mean, from our perspective, our -- 22 our goal was to look to continue to provide 23 additional services to other third-party tribes or 24 lenders to -- you know, in the same format that we 25 did with First Bank of Delaware. Whether those were</p>	<p style="text-align: right;">Page 119</p> <p>1 MR. ACKELSBERG: Okay. Thank you, 2 Richard. 3 MR. SCHEFF: But let him finish 4 answering before you ask another question, and don't 5 interrupt him. 6 BY MR. ACKELSBERG: 7 Q. Now, Mr. Lutes, you're aware, are you not, 8 that one of the things -- that one of the benefits 9 that Think offered the Chippewa Cree was the 10 ThinkCash customer portfolio? 11 MR. SCHEFF: Object to the form. 12 BY MR. ACKELSBERG: 13 Q. Am I right? 14 A. I wasn't involved in those discussions. 15 Q. I didn't ask you whether you were involved 16 in the discussions. You knew that was being 17 offered, didn't you? 18 A. No, I did not. 19 Q. You didn't know that. Okay. 20 Another document. 21 A. What time are we breaking for lunch? I am 22 going to need either a bathroom break or a lunch 23 break. 24 MR. ACKELSBERG: We can take a 25 bathroom break, go ahead. This is a good time.</p>
<p style="text-align: right;">Page 118</p> <p>1 with customers just through mere coincidence, 2 happened to also -- at some point in time, you know, 3 had received a loan from First Bank of Delaware or 4 even from us with our PayDay One direct lending 5 product -- because quite conceivably, we could have 6 offered our payday loans to some of those customers 7 under the state license law. 8 BY MR. ACKELSBERG: 9 Q. Mr. Lutes. 10 MR. SCHEFF: Let him finish. 11 A. So I'm just trying to get at, you're making 12 it sound like that there was an intent to 13 intentionally transfer. 14 BY MR. ACKELSBERG: 15 Q. Please -- 16 A. From my perspective, there wasn't. 17 MR. SCHEFF: Let him finish. 18 BY MR. ACKELSBERG: 19 Q. I'm asking for answers to my questions, not 20 a speech. 21 MR. SCHEFF: He's answering your 22 question. 23 MR. ACKELSBERG: He's giving -- 24 MR. SCHEFF: The fact that you don't 25 like it is not his problem.</p>	<p style="text-align: right;">Page 120</p> <p>1 We're about to -- about to show you a document. 2 THE VIDEOGRAPHER: We're off the 3 record at 11:34 a m. 4 (Break taken, 11:34 a m. to 11:44 a m.) 5 THE VIDEOGRAPHER: We are back on the 6 record at 11:44 a m. 7 BY MR. ACKELSBERG: 8 Q. Mr. Lutes, I am showing you another 9 document that was previously used in the deposition 10 program, and it's identified as Exhibit P-127. Can 11 you identify this document? 12 A. At the top it says "Term Sheet for Think 13 Finance-Chippewa Cree Transaction." I did notice on 14 the back that it's not signed by any of the parties, 15 nor dated. 16 Q. Right. 17 A. So I'm assuming it's -- it's draft form, or 18 maybe it is the final. But I don't know since it 19 wasn't signed. So . . . 20 Q. Right. But, I mean, is this a document 21 you're familiar with? 22 A. No. 23 Q. You've never seen this before? 24 A. I don't recall seeing it, no. 25 Q. Okay. As the CFO, were you consulted</p>

<p style="text-align: right;">Page 121</p> <p>1 before Think submitted a -- you know, a proposed 2 transaction to the Chippewa Cree? 3 MR. SCHEFF: Object to the form. 4 A. As the CFO, I would be consulted regarding 5 the proposed -- any proposed financial terms in a 6 term sheet between Think Finance and any of the 7 three tribes. 8 BY MR. ACKELSBURG: 9 Q. The term sheet references, you know, 10 someone named Haynes. Is that someone you're 11 familiar with? 12 A. Yes. I'm assuming by Haynes Investments, 13 I'm assuming it's referring to -- to Steven Haynes. 14 Q. Okay. And how did you first come to learn 15 of Steven Haynes? 16 A. I -- I never met Steven Haynes until 17 probably late 2012, 2013. My understanding is -- so 18 I never had any initial direct interaction with him. 19 My understanding is, is that Jason Harvison had met 20 him at some industry conference or became aware of 21 him, that -- that Mr. Haynes had done a lot of 22 business with -- with tribes. And by business, I 23 mean not just lending business, other types of 24 business as well. 25 Q. Are you familiar with the name Rick Eckman?</p>	<p style="text-align: right;">Page 123</p> <p>1 mean, I'm not -- so I appreciate that. I'm really 2 talking in terms of your input, your -- any 3 conversations you had; basically, what involvement 4 you had personally in the terms that were submitted 5 to the Chippewa Cree. 6 MR. SCHEFF: Object to the form. 7 A. I wasn't personally involved in any of the 8 negotiations. As I stated earlier, I would have 9 provided, you know, a consultation or reviewed a 10 potential term sheet to any of the three tribes, at 11 least -- you know, from a financial -- at least what 12 the financial terms or implications would be. 13 BY MR. ACKELSBURG: 14 Q. Okay. One of the things that you said 15 earlier this morning was that one question you would 16 have for a potential partner playing the role of the 17 lender would be whether that entity had access to 18 capital to fund the loans in the first place before 19 a participation happens, right? 20 MR. SCHEFF: Object to the form; 21 misstates the testimony. 22 BY MR. ACKELSBURG: 23 Q. That would be one of your concerns; am I 24 right? 25 MR. SCHEFF: Misstates the testimony.</p>
<p style="text-align: right;">Page 122</p> <p>1 A. Yes, I'm familiar with the name Rick 2 Eckman. 3 Q. Okay. And how did you first come to know 4 Rick Eckman? 5 A. Rick Eckman I knew through the First Bank 6 of Delaware relationship. I think he was involved 7 with First Bank of Delaware as their outside counsel 8 in some -- some manner. 9 Q. And was he involved at all in putting 10 together some of the Universal Fund transaction 11 documents? 12 A. I don't recall specifically, but I think he 13 was, yes. 14 Q. Okay. And is there any connection that you 15 recall between Mr. Eckman and Mr. Haynes? 16 A. No, I -- 17 MR. SCHEFF: Object to the form. 18 A. No, I don't recall any connection between 19 the two. 20 BY MR. ACKELSBURG: 21 Q. Okay. Do you recall anything about the 22 approach to the -- the Chippewa Cree? 23 MR. SCHEFF: Object to the form. 24 BY MR. ACKELSBURG: 25 Q. And I'm -- I know you weren't there. I</p>	<p style="text-align: right;">Page 124</p> <p>1 You can answer the question. 2 A. Can you rephrase the question? When you 3 say "entity," are you referring to the originating 4 lender? 5 BY MR. ACKELSBURG: 6 Q. Yes. 7 A. Oh, the originating lender. 8 Q. Yes. 9 A. Yes, that's something that we would always 10 evaluate from the financial perspective. I mean, 11 being the CFO, I'm responsible for, you know, kind 12 of understanding, you know, the economics of the 13 transaction. Does the originator lender intend to 14 hold all of the loan, participate out 90 percent, 15 99 percent? So. . . 16 Q. So at -- so we're talking, like, the end of 17 2010, the beginning of 2011, Think is talking to, 18 initially, the Otoe-Missouria. Later they're 19 talking to the Chippewa Cree. What do you recall 20 about the way that those potential originating 21 lenders would fund the loans? 22 MR. SCHEFF: Object to the form. 23 A. From my perspective, you know, when we as 24 an executive team discuss participating with -- you 25 know, offering services to tribes or, again, any</p>

<p style="text-align: right;">Page 125</p> <p>1 other third-party potential lenders besides tribes 2 at that point in time, it was -- my preference was I 3 liked the existing structure that we had in place, 4 you know, with First Bank of Delaware and with 5 Irving Trust Bank, that if we could replicate that 6 with whoever, you know, we ended up offering 7 additional services to and them originating loans, 8 and then, as I mentioned earlier, discussing with 9 VPC, or if VPC couldn't get involved, you know, that 10 we would need to find some other -- "we" being we 11 and whoever the -- the third party originator was, 12 would have to find some source of funding or 13 liquidity. 14 Because, like I said, regardless of 15 whether it was a bank or a tribe or other 16 third-party lender, I know that it's almost kind of 17 common sense in financial services that nobody 18 really can retain, you know, a hundred percent on 19 their balance sheet and they're always looking to, 20 you know, offload, securitize some -- some large 21 participation in those loans. 22 BY MR. ACKELSBURG: 23 Q. You testified previously that First Bank of 24 Delaware supplied its own funds for purposes of 25 originating the loans, right?</p>	<p style="text-align: right;">Page 127</p> <p>1 So I assumed based on, you know, the fact 2 that they already have existing online lending 3 relationships up and running, that they had access 4 to capital. 5 Q. Do you -- do you remember the company doing 6 any due diligence on either of the tribes with 7 regard to their history or experience with online 8 lending? 9 MR. SCHEFF: Object to the form. 10 A. I don't recall. I don't recall that, no. 11 BY MR. ACKELSBURG: 12 Q. I mean -- 13 A. I specifically did not do any due diligence 14 on the Chippewa Cree or the Otoe-Missouria in terms 15 of looking -- I mean, they're privately -- private 16 entities, tribes. So I'm not sure that I had access 17 to any of that. And, frankly, just from my 18 perspective, based on the fact that they had 19 existing lending relationships, I assumed that they 20 had access to capital. 21 Q. Well, it's not unusual for Think to do due 22 diligence on potential counterparties, right? I 23 mean, that happens all the time, doesn't it? 24 MR. SCHEFF: Object to the form. 25 A. I would actually say that during my time at</p>
<p style="text-align: right;">Page 126</p> <p>1 A. Yes, I -- well, what I testified was, is 2 that when you said capital, I assume that they came 3 up and by "own funds," they could have gone out and 4 borrowed funds from somebody else, deposits that 5 they -- you know, use their deposit base. That's, 6 in essence, borrowing funds from third-party 7 depositors, or it could have been their own capital, 8 their own excess cash flow. So when you used the 9 term "capital," I said they came up with the 10 liquidity either in the form of debt or capital 11 to -- to originate their loans. 12 Q. What -- what was your understanding of what 13 the source of the initial capital would be for 14 either the Otoe-Missouria or the Chippewa Cree that 15 Think was talking to in this period of time? 16 A. Well, I knew through third-party 17 conversations that both of those tribes had existing 18 lending relationships that -- outside of us; that 19 the Chippewa Cree was doing some type of this online 20 lending with some other third-party service 21 provider; and that I knew, even though I had never 22 directly met Mark Curry, that the Otoe-Missouria was 23 offering, again, some type of online lending product 24 and kind of partnering with Mark Curry and whatever 25 his entity was called at the time.</p>	<p style="text-align: right;">Page 128</p> <p>1 Think Finance, I did not do -- now, granted, the 2 relationship with First Bank of Delaware was already 3 established, but I didn't do due diligence on First 4 Bank of Delaware even, you know, on a quarterly 5 basis looking at their call reports. And the same 6 with Irving Trust Bank. So, no, at least from my 7 perspective as CFO, I never really did any due 8 diligence on third-party originating lenders. 9 BY MR. ACKELSBURG: 10 Q. Well, particularly, if they're -- they're 11 banks and they're regulated entities, you've got to 12 assume there's something bona fide about it, right, 13 I mean, if they're -- if they're banks? 14 MR. SCHEFF: Object to the form. 15 A. Your question was whether I did any due 16 diligence and my answer -- on third-party 17 originating banks or lenders, and my answer is, no, 18 I didn't. 19 BY MR. ACKELSBURG: 20 Q. Okay. Do you know if anybody did any due 21 diligence on the Chippewa Cree or the 22 Otoe-Missouria? 23 A. I don't -- I don't know the answer to that 24 question. 25 Q. Do you know it ever coming up as a subject</p>

<p style="text-align: right;">Page 129</p> <p>1 during these weekly meetings of the executives 2 during this period of time? 3 A. I don't -- I don't know. I do know that we 4 did a site visit before -- either right in advance 5 of launching the product or shortly thereafter. I, 6 specifically, at that point in time was just 7 interested in going up and visiting them and seeing 8 their operations. 9 So myself, Jason Harvison, I believe 10 Michelle Nguyen and Steve Schafer all went up and 11 did a site visit of the Chippewa Cree before 12 launching it, but I -- if you call that due 13 diligence, that's due -- I mean, we at least went 14 up and -- I specifically wanted to go up and do a 15 site visit, just meet the people because I hadn't 16 met them before. 17 Q. Well, this is before the contracts were 18 signed? 19 A. I don't recall. I -- it would have been in 20 the March or April 2011 time span. 21 Q. Okay. 22 A. It was either just before or just after. 23 Q. And when you went up there, what did you 24 see with regard to the existing online lending 25 operation that you referred to before?</p>	<p style="text-align: right;">Page 131</p> <p>1 some sort of a relationship with a Las Vegas entity 2 called Encore Services, right? 3 A. Let me -- if you don't mind, rephrase your 4 question. You said "you." I didn't approach the 5 Chippewa Cree. At the time that Think Finance 6 approached the Chippewa Cree, like I said, I was 7 aware that they were involved with some other 8 third-party in terms of having an existing online 9 lending relationship. I didn't know at the time 10 the -- what the name of that entity was. Subsequent 11 down, you know, six months, a year after the fact, 12 you know, I became aware that the -- the name of the 13 entity was Encore. 14 Q. Well -- 15 A. But that's about the extent of my knowledge 16 related to that particular program. 17 Q. What was the name of the -- of the loan 18 product that they supposedly were -- 19 A. I actually forget. I know that there was 20 one, but I don't -- I don't remember what the name 21 is. 22 Q. Do you know if they had any borrowers, any 23 customers? 24 A. I would assume so, yes. 25 Q. Well, I'm not asking what you assume. I'm</p>
<p style="text-align: right;">Page 130</p> <p>1 A. Well, we saw that there was an existing 2 online lending operation. They had other 3 businesses. I visited the casino that they ran. So 4 they appeared to be a pretty -- for a -- for a 5 tribal entity, they were running multiple 6 businesses. 7 Q. And was Mr. Haynes there at that meeting? 8 A. No, I don't recall him being there. 9 Q. Now, you mentioned the casino, but I'm not 10 really interested in the casino at the moment. I'm 11 interested in the online lending operation. Was 12 there a call center before you arrived? 13 A. I don't recall visiting the call center or 14 whether they had one prior -- prior to us arriving. 15 Q. Did you look at -- did they have a -- did 16 they have a credit committee? 17 A. They had -- no, they did not have a -- 18 well, let me rephrase my answer there. The folks -- 19 the people with the tribe that we met with were the 20 tribal lending council and CEO, COO of their tribal 21 lending operation. And we also, I believe, met with 22 a few of the other just tribal council members in 23 addition to tribal lending council. 24 Q. Now, you remember that at the time you 25 approached the Chippewa Cree, the Chippewa Cree had</p>	<p style="text-align: right;">Page 132</p> <p>1 saying, were you actually shown anything in your 2 visit with regard to the operations of a -- of a 3 lender? 4 A. When we went up there and visited them in 5 person, we had -- I left with the -- the 6 understanding and the basic knowledge that yes, they 7 had an existing lending operation. Did I see actual 8 customer loan agreements? No. Did I see actual 9 customers? No. It's an online lending entity. 10 Q. And did you go on the -- on the internet to 11 see what the website looked like? 12 A. No, I did not. 13 Q. Do you know for a fact that there was -- 14 was another lending operation that was -- that was 15 online at that point sponsored by the Chippewa Cree? 16 A. Today, as I sit here, yes, I believe that 17 they had an existing prior lending -- online lending 18 operation with Encore prior to, you know, us 19 providing services -- 20 Q. Okay. 21 A. -- for the Chippewa Cree. 22 MR. SCHEFF: Let him finish. 23 BY MR. ACKELSBURG: 24 Q. So to the extent that they were doing 25 anything online, it would have been through this</p>

<p style="text-align: right;">Page 133</p> <p>1 relationship, this prior relationship with Encore? 2 MR. SCHEFF: Object to the form. 3 A. My belief -- again, as I sit here today, 4 yes, they partnered with a company named Encore to 5 provide online lending products. 6 BY MR. ACKELSBURG: 7 Q. And what do you know about Encore, sitting 8 here today? 9 A. I know nothing about Encore. 10 Q. Nothing at all? 11 A. Nothing. 12 Q. Do you know if any of them went to jail? 13 A. No, I don't. 14 Q. Okay. So you went up with Jason and 15 Michelle. And was Ken there at that meeting? 16 A. Ken was not at that initial on-site. 17 Q. Okay. Was there -- was there any -- there 18 was no term sheet that was discussed at that 19 meeting? 20 A. As I said earlier, I don't recall when we 21 visited them, whether that was before signing the 22 term sheet or after the program had gone live. It 23 was right around that time. It could have been just 24 in advance. It could have been just after. I 25 apologize, I don't recall.</p>	<p style="text-align: right;">Page 135</p> <p>1 A. I believe it was Neal Rosette, and who, at 2 the time, I think was the CEO of the online lending 3 operation that they ran. 4 Q. Who worked on the deal documents once -- 5 once there was a handshake with the Chippewa Cree? 6 MR. SCHEFF: Object to the form. 7 A. Once we had -- I'm assuming your question 8 is that once we had a signed term sheet by handshake 9 agreement, a term sheet, you know, I believe our 10 outside counsel would have been Paul Tauber with the 11 law firm Coblenz, Patch & Duffy, I think, was the 12 last -- the law firms with all the different names 13 involved. It would have been Paul Tauber. I don't 14 recall who represented the tribe, the Chippewa Cree. 15 I do know that Katten, you know, represented VPC, 16 you know, on behalf of GPLS. 17 BY MR. ACKELSBURG: 18 Q. Now, once there were deal docs, am I right 19 that they looked somewhat like the deal docs from 20 the Universal period? 21 MR. SCHEFF: Object to the form. 22 MR. SHAPIRO: Object to form. 23 A. In terms of the structure, as I answered 24 previously, from an accounting finance perspective, 25 the structure was very similar with the Chippewa</p>
<p style="text-align: right;">Page 134</p> <p>1 Q. And you don't remember the subject coming 2 up of how the tribe was going to fund -- fund the -- 3 the loan originations? 4 A. No, I don't believe we discussed that. 5 Q. Do you remember discussing the revenue 6 share? 7 A. No. As I -- as I stated earlier, I was not 8 involved in the actual discussions with the tribe 9 regarding any of the term sheet. 10 Q. Who negotiated from the Think Finance side 11 the terms of the relationship with -- with Plain 12 Green? 13 A. I believe it was Jason Harvison. 14 Q. And was he also the one who was negotiating 15 with the Otoe-Missouria? 16 A. No, I believe that was Ken Rees. 17 Q. Okay. And on the Otoe-Missouria side, who 18 was Ken Rees negotiating with? 19 A. I don't know. I would assume it would be 20 the Otoe-Missouria tribe directly. 21 Q. Not with Mark Curry? 22 A. I -- I don't know. I wasn't involved in 23 that. 24 Q. Okay. And what about on the Plain Green 25 side, who was -- who was Jason negotiating with?</p>	<p style="text-align: right;">Page 136</p> <p>1 Cree, the Otoe-Missouria, the Tunica-Biloxi is what 2 it was with First Bank of Delaware and Irving Trust 3 Bank in terms of you have originating lenders, we 4 provided up front marketing services. As Think 5 Finance, we provided -- you know, licensed our 6 technology platform to the third-party lenders. And 7 then on the back end, there was the equivalent of an 8 admin agency agreement between us and the SPV, 9 whether it be the Universal Fund II or the GPLS 10 entity. 11 BY MR. ACKELSBURG: 12 Q. And there also was a guarantee and security 13 agreement where the corporation, Think Finance, was 14 backing certain obligations made by the various 15 subsidiary entities? 16 MR. SCHEFF: Object to the form. 17 A. There was a corporate guarantee involved in 18 the First Bank of Delaware, Irving Trust Bank and 19 then, yes, with the GPLS structure. 20 BY MR. ACKELSBURG: 21 Q. Now, let's -- let's just focus on Plain 22 Green at the moment, the first one. So we -- you 23 can agree that there was a marketing agreement with 24 TailWind, between TailWind and Plain Green, as there 25 was with the First Bank of Delaware, right?</p>

<p style="text-align: right;">Page 137</p> <p>1 A. I would agree with that, yes.</p> <p>2 Q. And there was another contract dealing with</p> <p>3 the technology services and the loan platform with</p> <p>4 TCDS, right?</p> <p>5 A. TCDS and Plain Green, yes.</p> <p>6 Q. Yes. And there would have been a</p> <p>7 participation agreement between GPLS, the special</p> <p>8 purpose vehicle, and -- and Plain Green?</p> <p>9 A. Yes.</p> <p>10 Q. And there was an administrative agency</p> <p>11 agreement, as you described, that had had a lot of</p> <p>12 similarities to the administrative agency agreement</p> <p>13 that predated the tribal contracts?</p> <p>14 MR. SCHEFF: Object to the form.</p> <p>15 A. There was an administrative agency</p> <p>16 agreement between TCAS and GPLS.</p> <p>17 BY MR. ACKELSBURG:</p> <p>18 Q. And a guarantee and security agreement</p> <p>19 between GPLS and the corporate umbrella?</p> <p>20 MR. SCHEFF: Object to the form.</p> <p>21 A. Yes, there was a corporate agreement and --</p> <p>22 or a corporate guarantee and security agreement</p> <p>23 between --</p> <p>24 BY MR. ACKELSBURG:</p> <p>25 Q. Now, the --</p>	<p style="text-align: right;">Page 139</p> <p>1 I would say the guarantee was to, you know, the</p> <p>2 performance of the credit default swap between</p> <p>3 Universal Fund II and TCAS and the corporate</p> <p>4 guarantee between Think Finance, Inc., and GPLS</p> <p>5 and -- again, and a similar type of credit default</p> <p>6 swap arrangement was relatively the same.</p> <p>7 Q. Was there a new element of exclusivity</p> <p>8 introduced into the relationship between Think</p> <p>9 Finance and Victory Park?</p> <p>10 MR. SHAPIRO: Object to the form. The</p> <p>11 witness just -- you're not listening to his</p> <p>12 testimony, and you're misstating it, deliberately, I</p> <p>13 think.</p> <p>14 Go ahead.</p> <p>15 A. Can you repeat the question?</p> <p>16 BY MR. ACKELSBURG:</p> <p>17 Q. I'm -- was there an element of exclusivity</p> <p>18 in the arrangement between Think Finance and -- and</p> <p>19 GPLS?</p> <p>20 MR. SHAPIRO: Object to form.</p> <p>21 Go ahead.</p> <p>22 A. As I recall, I wouldn't say exclusivity. I</p> <p>23 believe that, like any typical lending relationship,</p> <p>24 VPC, Victory Park Capital, providing the lending</p> <p>25 into the GPLS entity had a right of first refusal to</p>
<p style="text-align: right;">Page 138</p> <p>1 MR. SCHEFF: Wait, let him finish.</p> <p>2 BY MR. ACKELSBURG:</p> <p>3 Q. I'm sorry.</p> <p>4 A. -- between the parent company, Think</p> <p>5 Finance, Inc., and the GPLS entity.</p> <p>6 Q. The revenue share that was paid to the --</p> <p>7 to the Plain Green tribe pursuant to the master</p> <p>8 participation agreement was 4.5 percent; am I right?</p> <p>9 A. As I recall, that is correct.</p> <p>10 Q. Okay. And the guaranteed return to GPLS</p> <p>11 was how much in the beginning?</p> <p>12 A. I don't recall. I don't recall</p> <p>13 specifically. I'm going to guess that the -- it was</p> <p>14 in the 18 to 20 percent range, 17 to 20 percent</p> <p>15 range.</p> <p>16 Q. And how would you compare the obligations</p> <p>17 that Think had to VP -- to Victory Park with the</p> <p>18 obligations that Think Finance had to Wildstein back</p> <p>19 in the original Universal era?</p> <p>20 MR. SHAPIRO: Object to form.</p> <p>21 MR. SCHEFF: Object to the form.</p> <p>22 A. I -- I could answer the question, from my</p> <p>23 perspective, the corporate guarantee was generally</p> <p>24 the same between Think Finance and the Universal</p> <p>25 Fund II. I wouldn't say -- you said Mark Wildstein.</p>	<p style="text-align: right;">Page 140</p> <p>1 match the potential terms of any other third-party</p> <p>2 lender that may want to come in and lend to that</p> <p>3 GPLS entity.</p> <p>4 At the same time, the GPLS entity really</p> <p>5 was, for lack of a better term, owned -- or at least</p> <p>6 structured by Victory Park Capital. So if -- that's</p> <p>7 how I would answer that question.</p> <p>8 BY MR. ACKELSBURG:</p> <p>9 Q. Did Think Finance have the power to -- have</p> <p>10 the ability to assume any other debt, to take on any</p> <p>11 other debt without the permission of Victory Park?</p> <p>12 MR. SCHEFF: Object to the form.</p> <p>13 MR. SHELTON: Object to form.</p> <p>14 MR. SCHEFF: You're talking about in</p> <p>15 2011?</p> <p>16 MR. ACKELSBURG: Yeah.</p> <p>17 MR. SCHEFF: Thank you.</p> <p>18 A. It probably would have -- we would have</p> <p>19 been able to raise other debt, again, under the</p> <p>20 right of first refusal type of situation with</p> <p>21 Victory Park Capital. Meaning that, like, again,</p> <p>22 any lending relationship, if we suddenly needed, you</p> <p>23 know, financing for our direct lending payday</p> <p>24 product -- which at the time I think we were</p> <p>25 self-financing it, so we didn't. But let's say that</p>

<p style="text-align: right;">Page 141</p> <p>1 for whatever reason it really started to grow, we 2 would have, first, just because of the nature of the 3 relationship, approached Victory Park Capital. But 4 I believe -- and I may not be right on this, whether 5 they had a right of first refusal on anything else. 6 Clearly, they -- if we had brought in 7 another lender, for whatever reason, let's say that 8 they approved it, or even if they didn't need to 9 approve it, because they had the security agreement 10 on a lot of the other assets of Think Finance, you 11 know, any new lender would have been subordinated to 12 them in terms of those other assets. 13 BY MR. ACKELSBURG: 14 Q. And did -- and, again, from -- we're 15 talking about 2011, the original deal with -- 16 pertaining to Plain Green, did Victory Park have a 17 blanket security interest on the assets of Think 18 Finance? 19 MR. SHAPIRO: Object to form. 20 A. Yes. As -- as I just mentioned, as part of 21 the structure with GPLS, because they were now a 22 sophisticated, you know, lender, they, like any 23 other one, we had a lending relationship with Silver 24 Park -- Silver Point Capital, as I talked about 25 earlier, you know, have a lien on the assets of the</p>	<p style="text-align: right;">Page 143</p> <p>1 that obligation that Think had? 2 A. It was just -- as I just mentioned, it was 3 to -- in addition to having the blanket lien on the 4 other assets -- because when you look at a credit 5 default swap type of situation -- which is, again, 6 what we had between TCAS and GPLS -- on a monthly 7 basis, if there's, as I mentioned earlier, excess 8 net income at the end of the month, we were entitled 9 to that. Under the credit default swap, that money 10 would be moved over to TCAS. But then, technically 11 speaking, we could move that money from TCAS to our 12 parent company, to a PayDay One entity, to any 13 entity for general corporate purposes. 14 But Victory Park Capital -- and I get 15 this -- like any, you know, SPV-type structure would 16 be nervous that, well, really their agreement is 17 only between TCAS and them. So as TCAS is, you 18 know, collecting premiums on the credit default 19 swap, if they're turning around and moving that 20 money out of TCAS to another Think Finance legal 21 entity, TCAS, theoretically, could not have any 22 assets. 23 And then suddenly -- if TCAS owed money to 24 GPLS because the loans went bad, then suddenly 25 they're a little bit more naked because -- and so</p>
<p style="text-align: right;">Page 142</p> <p>1 company. 2 BY MR. ACKELSBURG: 3 Q. The lien that Victory Park had, though, was 4 a senior lien that trumped -- that trumped other 5 liens; am I right? 6 MR. SCHEFF: Object to the form. 7 MR. SHAPIRO: Object to form. 8 A. Well, at that point in time, we didn't have 9 any other debt relationship with any other 10 third-party lender, so it -- it was really 11 standalone. It was senior to nothing else. We had 12 nothing else -- and, really, the essence of that was 13 to provide, you know, additional collateral support 14 for the equivalent of the credit default swap 15 between TCAS and GPLS. 16 BY MR. ACKELSBURG: 17 Q. And another form of collateral was -- 18 required minimum investment by Think in GPLS; am I 19 right? 20 A. That is correct. 21 Q. And that's referred to as LTV? 22 A. Yes, when you use the term "LTV," I 23 would -- I think it's an acronym for "loan to 24 value." 25 Q. And so what was the nature of that -- of</p>	<p style="text-align: right;">Page 144</p> <p>1 hence the reason for having kind of the lien and the 2 corporate guarantee, but then also the reason why 3 they would want us to kind of collateralize part of 4 that credit default swap, you know, to kind of 5 create similar to what we had shown on that earlier 6 slide, you know, a buffer between, you know, the 7 normal cash flows that typically exceed. But in the 8 event that there was a hiccup and losses, you know, 9 they were requested and we were comfortable 10 providing, you know, kind of a reserve, so to speak, 11 to kind of collateralize the credit default swap. 12 Q. And the way that functioned is that -- is 13 that you, as the CFO, would have to monitor the size 14 of the GPLS holding and -- and might have to, for 15 example, increase the investment that Think -- you 16 would have to monitor the -- the extent of the Think 17 investment on a monthly basis as it related to the 18 total GPLS fund; am I right? 19 MR. SCHEFF: Object to the form. 20 A. From my perspective, what that reserve or 21 investment required was similar to any other type of 22 traditional kind of credit default swap or, you 23 know, arrangement in terms of as the assets of GPLS 24 increased, meaning the participations purchased from 25 the various tribes, it seemed reasonable, yes, that</p>

<p style="text-align: right;">Page 145</p> <p>1 we would have to increase the size of our kind of</p> <p>2 collateral -- collateralizing part of our credit</p> <p>3 default swap obligation to GPLS.</p> <p>4 Conversely, if in -- you know, in this</p> <p>5 particular industry, there's a seasonality aspect,</p> <p>6 typically during Q1, customers, you know, related to</p> <p>7 the loans get tax refunds and use -- in the right</p> <p>8 way, you know, use a lot of the tax refund to pay</p> <p>9 down -- pay down or pay off their loans with the</p> <p>10 third-party lenders, which would then also reduce</p> <p>11 the amount of assets in GPLS. We would -- at that</p> <p>12 point, would also be able to reduce the size of our</p> <p>13 credit default swap collateral obligation. So it</p> <p>14 went up and down, and you're right, we did monitor</p> <p>15 it on a monthly basis.</p> <p>16 BY MR. ACKELSBURG:</p> <p>17 Q. And when -- and when sales were up, that</p> <p>18 would mean that the way that would work would be,</p> <p>19 what you're describing as a reserve, you would</p> <p>20 actually have to purchase a share -- purchase shares</p> <p>21 in that amount in GPLS. Isn't that the way it would</p> <p>22 work?</p> <p>23 MR. SCHEFF: Object to the form.</p> <p>24 A. The way it worked was that, yes, when we</p> <p>25 put money in, we technically invested in GPLS but</p>	<p style="text-align: right;">Page 147</p> <p>1 Finance, Inc., and we've got \$5 million in that.</p> <p>2 Well, because of the -- the security agreement</p> <p>3 between GPLS and Think Finance, Inc., you know, in</p> <p>4 the event that TCAS defaulted on the credit default</p> <p>5 swap obligation and GPLS couldn't be made whole</p> <p>6 from, you know, the investment reserve concept where</p> <p>7 we had put money in, that they would have the right</p> <p>8 to then go to whoever our bank was with the parent</p> <p>9 company under the deposit account control agreement</p> <p>10 and say: Hey, Think Finance/TCAS is in default on</p> <p>11 this credit default swap obligation, you know, we</p> <p>12 want to be able to, for lack of a better term,</p> <p>13 freeze or take control of the parent company cash</p> <p>14 account.</p> <p>15 So my understanding is really the DACA</p> <p>16 really is only effective, you know, in the event of</p> <p>17 default where we don't have the ability to remediate</p> <p>18 or pay them off.</p> <p>19 Q. But it gives them a remedy with --</p> <p>20 specifically with regard to bank accounts, right?</p> <p>21 MR. SCHEFF: Object to the form.</p> <p>22 BY MR. ACKELSBURG:</p> <p>23 Q. In the event of a default?</p> <p>24 A. It gives them a remedy to bank accounts in</p> <p>25 the event of default.</p>
<p style="text-align: right;">Page 146</p> <p>1 that Victory Park, having, lack of a better term,</p> <p>2 ownership or control of the GPLS entity, would have</p> <p>3 the right to that. But, yes, we would buy a share</p> <p>4 like any other third-party investor that VPC allowed</p> <p>5 into the GPLS entity.</p> <p>6 BY MR. ACKELSBURG:</p> <p>7 Q. And there also were in place things called</p> <p>8 DACAs; am I right? You know what a -- DACA, that's</p> <p>9 a deposit account control agreement?</p> <p>10 A. Yes.</p> <p>11 Q. Okay. And a -- and a DACA is, effectively,</p> <p>12 a security interest on a bank account, right?</p> <p>13 MR. SHAPIRO: Object to form.</p> <p>14 BY MR. ACKELSBURG:</p> <p>15 Q. It works like that?</p> <p>16 MR. SHAPIRO: Same objection.</p> <p>17 MR. SHELTON: Object to form.</p> <p>18 A. Say that one more time. And I apologize.</p> <p>19 BY MR. ACKELSBURG:</p> <p>20 Q. Fine. What's a DACA?</p> <p>21 A. From my perspective, a DACA is -- is -- I'm</p> <p>22 trying to think of how it would apply to the GPLS --</p> <p>23 well, let's -- between GPLS and us, that we would</p> <p>24 have nonTCAS bank accounts. So let's say that we</p> <p>25 have a bank account at our parent company, Think</p>	<p style="text-align: right;">Page 148</p> <p>1 Q. And that -- and there also were DACAs with</p> <p>2 regard to the -- to the tribal -- well, let's stick</p> <p>3 with -- let's stick with Plain Green. With regard</p> <p>4 to the Plain Green funding account and collection</p> <p>5 account, in other words, the accounts that were used</p> <p>6 in the -- in the funding and collecting of loans; am</p> <p>7 I right?</p> <p>8 A. The way the DACAs worked with Plain Green</p> <p>9 and GPLS is because -- and I'll just use Plain</p> <p>10 Green, but it was similar with Great Plains Lending</p> <p>11 and similar with Mobiloans lending and those tribes.</p> <p>12 Is that as the originating lender, the tribe was</p> <p>13 responsible for, you know, funding all of the -- a</p> <p>14 hundred percent of the customer loans, and then two</p> <p>15 to three days later, they would sell a participation</p> <p>16 interest into the GPLS fund.</p> <p>17 When a customer made a payment on the</p> <p>18 loans, a hundred percent of the customer payments</p> <p>19 went into a Plain Green collections account, and</p> <p>20 Plain Green would then be responsible for -- and</p> <p>21 forgive me, I don't know whether it happened same</p> <p>22 day or next day, but be responsible. And we, as</p> <p>23 TCAS, part of our accounting -- and I know that</p> <p>24 you've previously deposed Linda Rogenski and Linda</p> <p>25 Callnin, but that's part of their responsibility</p>

<p style="text-align: right;">Page 149</p> <p>1 was, you know, ensuring that the tribes, you know, 2 were moving, you know, 90 percent of the collections 3 from the Plain Green collection account to the GPLS 4 collection account.</p> <p>5 So my understanding in that kind of 6 situation, the DACA would be there to help enforce 7 that if for some reason the Chippewa Cree and the 8 Plain Green, you know, collection account wasn't 9 properly remitting, you know, the money under the 10 participation agreement the 90 percent of the 11 collection to the GPLS, that VPC would have the 12 right to go to the Plain Green bank and say, hey, 13 they're in default under our participation 14 agreement, you know, we have the right to get our 15 90 percent.</p> <p>16 Q. Yeah, and I appreciate you saving us some 17 time in saying that this was true of Great Plains 18 Lending and Mobiloans, that that -- that these 19 features with regard to the relationship between 20 Think Finance and VPC, it really -- it -- there 21 really wasn't a difference tribe by tribe except as 22 to the amount of the revenue share; am I -- am I 23 right?</p> <p>24 MR. SCHEFF: Object to the form.</p> <p>25 A. The way I would view GPLS is it was almost</p>	<p style="text-align: right;">Page 151</p> <p>1 Q. Well, but those -- the TailWind and 2 Decision Science fees, that was standard across all 3 three of the tribes; am I right?</p> <p>4 MR. SCHEFF: Object to the form.</p> <p>5 A. Yeah, I -- I don't recall whether we 6 charged each tribe the same marketing fee or -- or 7 licensing fee. It's quite possible and reasonable, 8 but at the same time I would also say that we would 9 have the right to make them different if we so 10 chose. If some reason we were incurring more 11 marketing expense to, you know, attract customers to 12 the Tunica-Biloxi Mobiloans product, we would have 13 the right, if we so chose, to change the marketing 14 fee between us and them to increase that fee.</p> <p>15 BY MR. ACKELSBERG:</p> <p>16 Q. But if we wanted to know whether there were 17 differences in the fees or they were the same, we 18 would just look at the respective marketing and 19 servicing and licensing agreements, right?</p> <p>20 A. Yes. I mean, you know, we had separate 21 marketing agreements between us, our TailWind entity 22 and each of the three tribes. And the same with the 23 TC Decision Sciences entity.</p> <p>24 Q. Right.</p> <p>25 A. So -- and as I said, I don't recall if they</p>
<p style="text-align: right;">Page 150</p> <p>1 kind of, like, a master SPV that was created in a 2 way that VPC would be the primary lender into that 3 SPV. Theoretically, they could allow other lenders 4 into that SPV if they so chose. But, yes, that that 5 GPLS master SPV was buying participations from 6 multiple tribal entities, not just one.</p> <p>7 BY MR. ACKELSBERG:</p> <p>8 Q. Yeah.</p> <p>9 A. And that was done more for probably just 10 ease overall. I mean, it's easier for us to, you 11 know --</p> <p>12 Q. I would think so.</p> <p>13 A. For them to manage one and for us to move 14 money back and forth between one and three tribes 15 rather than to have. . .</p> <p>16 Q. Right. I understand.</p> <p>17 But I'm also right, though, that there was 18 one difference tribe to tribe, and that is the 19 amount of the revenue share?</p> <p>20 A. Yes, because, I mean, each tribe was a 21 separate relationship between -- each tribal lending 22 was a separate relationship between that particular 23 tribe and GPLS, and even us as the service provider 24 under the marketing agreement and the Decision 25 Sciences agreement, yes.</p>	<p style="text-align: right;">Page 152</p> <p>1 were the same. They might have been just for -- for 2 ease. And, generally, the -- the amount of 3 marketing and servicing was -- probably cost us the 4 same.</p> <p>5 Q. And with regard to the -- to the 6 participation agreements that GPLS had with the 7 three different tribes, there was a difference with 8 regard to the revenue share that GPLS would pay to 9 the respective tribal entity; am I right?</p> <p>10 A. As I recall, yes, when I remember looking 11 at the -- back in time in looking at those master 12 participation agreements between GPLS and each of 13 the three individual tribes, there -- there probably 14 were differences in the revenue profit share.</p> <p>15 Q. So am I right -- so we already mentioned 16 that Plain Green was a 4.5 percent revenue share, 17 right?</p> <p>18 A. I believe so, yes.</p> <p>19 Q. And Mobiloans was a 4 percent, a little bit 20 lower; am I right?</p> <p>21 A. I don't recall specifically, but I'll -- 22 I'll assume that you're telling me the correct 23 percentage.</p> <p>24 Q. And Great Plains Lending was more a, sort 25 of, sliding scale like it was with First Bank of</p>

<p style="text-align: right;">Page 153</p> <p>1 Delaware; am I right?</p> <p>2 MR. SCHEFF: Object to the form.</p> <p>3 A. Yes, as I recall, it was -- the</p> <p>4 participation agreement in terms of profit share,</p> <p>5 revenue share between GPLS and Great Plains Lending</p> <p>6 was a sliding scale.</p> <p>7 BY MR. ACKELSBURG:</p> <p>8 Q. And during the course of the products, the</p> <p>9 GPL -- the Great Plains Lending revenue share paid</p> <p>10 by GPLS tended to be higher than the revenue share</p> <p>11 paid by Mobiloans -- paid to Mobiloans or Plain</p> <p>12 Green; am I right?</p> <p>13 MR. SHELTON: Object to form.</p> <p>14 A. My understanding is, yes, the -- the level</p> <p>15 of profit share being paid by GPLS to Great Plains</p> <p>16 Lending was higher than the other two tribes, but my</p> <p>17 understanding, also, was that the average APR and --</p> <p>18 was higher for that Great Plains Lending product</p> <p>19 because it was viewed as a slightly riskier customer</p> <p>20 base that they were targeting. The Otoe-Missouria</p> <p>21 was a slightly riskier customer than what Plain</p> <p>22 Green would have been originating to or what Tunica</p> <p>23 through Mobiloans would have been originating to.</p> <p>24 So I think that's probably the reason why</p> <p>25 Great Plains received a higher profit share was</p>	<p style="text-align: right;">Page 155</p> <p>1 Harvison, and, you know, presenting the concept to</p> <p>2 their entire tribal council, not just their tribal</p> <p>3 lending entity but their entire tribal council. But</p> <p>4 I don't -- I can't recall exactly who handled the</p> <p>5 negotiations for the Tunica -- on behalf of the</p> <p>6 Tunica tribe or the -- the Mobiloans entity. I do</p> <p>7 recall that Rick Eckman, I believe, was their</p> <p>8 outside general counsel and representing them on</p> <p>9 those transactions.</p> <p>10 Q. And he was the counsel for First Bank of</p> <p>11 Delaware as well, right?</p> <p>12 A. He was at one point in time, I believe, an</p> <p>13 outside general counsel for -- for First Bank of</p> <p>14 Delaware. I don't know if he was still at that same</p> <p>15 time. I don't know.</p> <p>16 Q. But you don't know if he was representing</p> <p>17 Plain Green?</p> <p>18 A. I don't remember if he was representing</p> <p>19 Plain Green in their initial discussions with this.</p> <p>20 Q. Okay. So just as you did an early trip</p> <p>21 personally, you were part of the Think delegation to</p> <p>22 Box Elder, you were also --</p> <p>23 A. I'm smiling because I -- I forgot the name</p> <p>24 of the city right there, but yeah.</p> <p>25 Q. I know. You stayed in a motel in Havre,</p>
<p style="text-align: right;">Page 154</p> <p>1 because the APR, in general, was higher. It was a</p> <p>2 riskier customer. So GPLS, with their 90 percent,</p> <p>3 would have been probably receiving more revenue, on</p> <p>4 average, potentially, per customer, so they were</p> <p>5 willing to give more profit share to Great Plains.</p> <p>6 BY MR. ACKELSBURG:</p> <p>7 Q. And the -- so that would have been really</p> <p>8 part of the -- those initial negotiations that you</p> <p>9 weren't a part of; am I right?</p> <p>10 MR. SCHEFF: Object to the form.</p> <p>11 A. The -- the participation agreements -- I</p> <p>12 mean, really, the participation agreements between</p> <p>13 GPLS and each of the three tribes, yes, I wasn't</p> <p>14 directly, you know, involved in. But, yeah, whoever</p> <p>15 was negotiating those agreements certainly would</p> <p>16 have negotiated those terms.</p> <p>17 BY MR. ACKELSBURG:</p> <p>18 Q. And you don't -- you don't recall who was</p> <p>19 negotiating for Plain Green, right? I think you</p> <p>20 told us that before.</p> <p>21 A. Yeah, yeah, I don't recall who negotiated</p> <p>22 on behalf of Plain Green.</p> <p>23 Q. And is the answer the same for Mobiloans?</p> <p>24 A. For Mobiloans, I don't recall. I mean, I</p> <p>25 recall visiting them on site, along with Jason</p>	<p style="text-align: right;">Page 156</p> <p>1 and -- yeah.</p> <p>2 A. Yeah.</p> <p>3 Q. We know the whole -- the whole routine,</p> <p>4 yeah.</p> <p>5 A. It's actually very pretty country.</p> <p>6 Q. Yeah, right, it is.</p> <p>7 You were also part of a delegation</p> <p>8 precontract with the Tunica-Biloxi?</p> <p>9 A. Yeah, the -- the Tunica-Biloxi relationship</p> <p>10 happened later in 2011. As I recall, they were</p> <p>11 referred to us by Bob Johnson, who we had partnered</p> <p>12 with through the Irving Trust Bank agreement. We</p> <p>13 were interested in offering a line of credit product</p> <p>14 like we did with Irving Trust -- through Irving</p> <p>15 Trust Bank.</p> <p>16 We were interested in offering a similar</p> <p>17 type of line of credit product with the tribe, and</p> <p>18 Bob was aware of the Tunica-Biloxi tribe because --</p> <p>19 I believe they might be the only African American</p> <p>20 Indian tribe in the U.S., and Bob, you know, founder</p> <p>21 of the black entertainment network, heavily involved</p> <p>22 in, you know, the African American business</p> <p>23 community had, you know, somehow established a</p> <p>24 relationship with them up through DC lobbying</p> <p>25 efforts or whatnot.</p>

<p style="text-align: right;">Page 157</p> <p>1 But -- you know, and we had kept in touch 2 with Bob after we stopped partnering with Irving 3 Trust Bank. And if I say it was his bank, he 4 technically didn't own all of it, but he was 5 involved in that bank somehow. But, you know, he 6 referred us to them.</p> <p>7 And so we had to go out -- "we," Jason, 8 myself, Michelle Nguyen, I believe, went and did a 9 presentation to the Tunica-Biloxi tribe, because 10 unlike the other two, I don't believe that they had 11 an existing online lending product or relationship 12 with any other service provider. So this was new 13 to them. So, you know, Bob encouraged us to go out 14 and make a presentation to their formal tribal 15 council.</p> <p>16 Q. And how -- and what were you suggesting to 17 the Tunica would be their means -- or did you 18 suggest any way that they could fund the loans up 19 front?</p> <p>20 A. The thing that I still recall to this day, 21 I was amazed when we -- when we flew into 22 Tunica-Biloxi, Louisiana, what really struck me was, 23 one, how large their tribal casino was; two, how 24 large their, you know, tribal government office, so 25 to speak, was.</p>	<p style="text-align: right;">Page 159</p> <p>1 capital.</p> <p>2 Q. Have the Tunica-Biloxi, over the course of 3 their relationship with Think Finance, ever provided 4 the -- the funding capital for the loans originated 5 in the name of Mobiloans?</p> <p>6 A. I don't recall specifically whether they -- 7 they provide the upfront money to originate their 8 loans or whether they were borrowing that from some 9 other third-party entity.</p> <p>10 Q. Or what about from GPLS?</p> <p>11 A. Well, GPLS would -- as part of the 12 structure -- and this makes sense from a tax 13 perspective -- is that the one thing that all of the 14 tribes -- and I think even when you go back to the 15 First Bank of Delaware agreement, from a regulatory 16 perspective, the FDIC, you know, the bank -- the 17 tribes are capital constrained. There's always a 18 concern that what if we originate a hundred percent 19 of the loan, and as part of these master 20 participation agreements, which I'm sure you're 21 aware, you know, at any point in time GPLS can say, 22 no, we choose to no longer purchase participations.</p> <p>23 One of the things I always liked about the 24 structure we had with the bank -- banks and the 25 structure with the tribes is that at any one point</p>
<p style="text-align: right;">Page 158</p> <p>1 And as we were -- we were -- we got there 2 early for the presentation. We were in a separate 3 room kind of like outside of here. And we were 4 sitting in the lobby, and there were two gentlemen 5 across from us with either, like, Goldman Sachs or 6 Credit Suisse, investment bankers, that were 7 pitching another deal to this tribe. And I'm, like, 8 wow.</p> <p>9 I remember whispering to Jason that this 10 must be a pretty sophisticated tribe given the size 11 of their casino, which was easily six or seven 12 stories high, hotel casino, and then the fact that 13 there's, you know, investment bankers in the lobby 14 waiting to pitch whatever the next deal happened to 15 be.</p> <p>16 So I think maybe -- well, I mean, I was 17 impressed with, you know, their operations. They 18 seemed to be pretty sophisticated. So to your 19 question about whether I was nervous or whatnot 20 about, you know, how they would come up with the 21 capital, clearly not because they -- just based 22 on bumping into investment bankers in their lobby, 23 seeing the size of their operations, even more 24 so than the other two tribes, they seemed to be 25 pretty sophisticated and definitely had access to</p>	<p style="text-align: right;">Page 160</p> <p>1 in time, any of the three parties involved could 2 choose to stop being a part of the relationship. At 3 any point in time, any of the tribes or the banks 4 could say we choose to no longer originate loans. 5 At any point in time as part of the master 6 participation agreement, GPLS could say we choose to 7 no longer purchase participations. And we, at any 8 point in time, as the marketer licensing the 9 technology could choose upon whatever the required 10 notice was to say we're no longer going to market 11 your product or give you our scores.</p> <p>12 So what -- what the tribes were concerned 13 about, and the same with the FDIC concern from First 14 Bank of Delaware's perspective is, what happens if 15 you originate the loans a hundred percent and before 16 you can sell them, the 90 percent or 99 percent 17 participation interest to GPLS or the Universal Fund 18 II, what happens if those investors say we're not 19 going to buy anymore? And so there was this concept 20 both with -- I believe with First Bank of Delaware 21 and then also with the tribes, and the tribes in 22 particular -- because you can appreciate, even 23 Tunica, as sophisticated as they are, are probably 24 more capital constrained than your traditional 25 bank -- you know, there -- and the fact that we had</p>

<p style="text-align: right;">Page 161</p> <p>1 also -- I shouldn't say "we." The lawyers had 2 introduced the concept of you've got to wait two or 3 three days -- I think it might be two, maybe 4 three -- from the point -- 5 MR. SHELDON: Let me just put in an 6 objection here and just say to the extent that your 7 answer requires revealing any information that was 8 communicated to you by Think's lawyers or Think's 9 outside counsel, please don't give -- provide that 10 answer. If you have any questions about it, we can 11 step out in the hall. To the extent your answer is 12 just conveying what ended up in a document, you 13 know, please talk about what ended up in a document, 14 not what -- what was communicated to you by Think's 15 in-house or outside counsel. Okay? 16 A. Okay. Let me just finish the thought. I 17 know this was a little long-winded, but I think it 18 was an important point and that's why I'm taking my 19 time here. 20 Is that with each of the tribes, for tax 21 purposes, they held on to a hundred percent of the 22 originations of the loans for two to three business 23 days before they sold the participation to the GPLS 24 entity. 25 As you can appreciate, thousands of</p>	<p style="text-align: right;">Page 163</p> <p>1 account that GPLS set up to serve that function. Am 2 I right? 3 MR. SCHEFF: Object to the form; 4 misstates the testimony. 5 Answer the question if you can. 6 A. I wouldn't phrase it that way. There was a 7 reserve that if the tribe wanted to use it for 8 originating loans or for other purposes, it had, 9 because it was meant -- capital meant to kind of 10 cover them in the situation that if GPLS stopped 11 buying, that covered the two to three days' worth of 12 loans that -- that they would have originated. Each 13 of the tribes could have had alternative sources for 14 funding the loans. I don't have privy to that 15 information. 16 BY MR. ACKELSBURG: 17 Q. Well, they could have, but you're -- you're 18 not aware of them ever having -- having supplied any 19 outside funding capital to the funding of Mobiloans 20 loans -- 21 MR. SCHEFF: Object to the form. 22 You can answer the question. 23 BY MR. ACKELSBURG: 24 Q. -- loans, do you? 25 A. I'm not aware of -- I just don't -- I don't</p>
<p style="text-align: right;">Page 162</p> <p>1 customer loans could be originated on a daily basis 2 by each of those tribes. They were concerned that 3 they would originate two to three days' worth of 4 loan and GPLS would say: We're not going to buy it. 5 And, suddenly, they're on the hook for a hundred -- 6 holding a hundred percent of those loans and being 7 capital constrained on a pretty immediate time 8 space. 9 So what the lawyer -- what the concept 10 was, was to introduce that GPLS would advance two to 11 three days in the form of a reserve that in the 12 event that it said, no, we're not going to buy any 13 more, there was already a reserve to cover the two 14 to three days' worth of loans originated. 15 BY MR. ACKELSBURG: 16 Q. Okay. That's what I was -- 17 A. So I'm sorry it was so longwinded, but 18 that's -- I wanted to get that out there. It was 19 really for the -- from my perspective, the tax and 20 the delay in being able to sell same day. 21 Q. So I just -- I think I understand your 22 answer. 23 So I was asking how the loans were funded 24 in the first place, and it sounds like with 25 Mobiloans, the answer was there was a reserve</p>	<p style="text-align: right;">Page 164</p> <p>1 have enough knowledge to answer that question. I 2 don't know. 3 Q. You sat in, it sounds like, on two -- two 4 sales -- sales visits, one at the Chippewa Cree and 5 one at Mobiloans. You went with Jason and Michelle 6 or people from the product side, right? So this 7 happened twice, right? 8 MR. SCHEFF: Object to the form. 9 You can answer the question. 10 A. From my perspective, I wouldn't call those 11 sales pitches. The Chippewa Cree was not a sales 12 pitch, as I think we discussed earlier. We might 13 have already signed the term sheet or we might have 14 been in the process. It was more of just an onsite 15 visit to meet our business partners. 16 BY MR. ACKELSBURG: 17 Q. Do you remember -- do you remember the 18 term -- do you remember the -- you were at the 19 initial Mobiloans trip, though. And I'm wondering, 20 during that trip, do you remember someone on the 21 Think side explaining that the Tunica would not have 22 to lay out any money? 23 A. I -- I don't -- I was at that presentation. 24 I don't specifically recall, but it's -- yeah, I 25 don't -- I don't recall specifically. I'm sure what</p>

<p style="text-align: right;">Page 165</p> <p>1 we would have -- would have explained to them is</p> <p>2 with the reserve concept, that they shouldn't be</p> <p>3 concerned from a capital perspective that they would</p> <p>4 be originating loans that they would not be able to</p> <p>5 sell at least 90 percent participation interest to</p> <p>6 GPLS.</p> <p>7 Q. Okay. Thank you.</p> <p>8 Do you remember the term "turnkey"?</p> <p>9 A. I would not have used it from a finance</p> <p>10 perspective. So I --</p> <p>11 Q. I'm not suggesting it's a financial term.</p> <p>12 I'm asking whether --</p> <p>13 MR. SCHEFF: Let him finish his</p> <p>14 answer.</p> <p>15 BY MR. ACKELSBURG:</p> <p>16 Q. -- you remember the term being used by</p> <p>17 other members of the team: Michelle or Jason, for</p> <p>18 example?</p> <p>19 MR. SCHEFF: Object to the form.</p> <p>20 You can answer the question if you can.</p> <p>21 A. No, I don't specifically recall.</p> <p>22 BY MR. ACKELSBURG:</p> <p>23 Q. You have seen it -- you have seen marketing</p> <p>24 material where Think's services as a service</p> <p>25 provider are described as a turnkey, haven't you?</p>	<p style="text-align: right;">Page 167</p> <p>1 A. From my perspective, things that the tribe</p> <p>2 would be responsible for besides just originating</p> <p>3 the loan and, you know, reviewing, you know, the --</p> <p>4 the credit decisioning suggestions or scores that we</p> <p>5 gave them for their approval and understanding, and,</p> <p>6 you know, the ACH things out of their accounts and</p> <p>7 all of that stuff, they would be responsible for</p> <p>8 the -- the customer support and the collections.</p> <p>9 We did not handle the collections in any</p> <p>10 way. We helped provide monitoring services to help</p> <p>11 them monitor the outsourced customer support and</p> <p>12 collections, but that ultimately was responsible for</p> <p>13 the tribes. I'm sure I'm probably forgetting some</p> <p>14 other operational things, but by no means did we</p> <p>15 ever provide everything.</p> <p>16 MR. ACKELSBURG: I'm going to break</p> <p>17 very soon. I know we're all hungry. I'm just</p> <p>18 trying to get to a good cutoff point.</p> <p>19 BY MR. ACKELSBURG:</p> <p>20 Q. So with Mobiloans, the funding of the loans</p> <p>21 up front was done through a -- the reserve account,</p> <p>22 right, that you described?</p> <p>23 MR. SHAPIRO: Object to form.</p> <p>24 MR. SCHEFF: Object to the form.</p> <p>25 A. That's not how I would phrase my answer.</p>
<p style="text-align: right;">Page 166</p> <p>1 MR. SCHEFF: Object to the form.</p> <p>2 You can answer the question.</p> <p>3 A. I would say that from the services we</p> <p>4 provide, the marketing services, the licensing of</p> <p>5 the technology, in essence, yes, what we do is</p> <p>6 turnkey. But there were certainly obligations that</p> <p>7 the tribes as the originating lender would still be</p> <p>8 a hundred percent responsible for that we were not</p> <p>9 involved in at all. So --</p> <p>10 BY MR. ACKELSBURG:</p> <p>11 Q. Like what?</p> <p>12 MR. SHELTON: Hold on. Can we stop</p> <p>13 for a second, please? Irv, I realize that you're</p> <p>14 frustrated with some of the witness's answers and</p> <p>15 you don't like some of the answers because of your</p> <p>16 tone and you don't like of the length of answers.</p> <p>17 But at probably a dozen different points through</p> <p>18 this deposition already, which is only halfway</p> <p>19 through, you've cut the witness off. And I'd just</p> <p>20 ask you to please let the witness finish and wait</p> <p>21 until the end. The witness is allowed to give the</p> <p>22 full answer that he believes is necessary for any of</p> <p>23 your questions. Okay?</p> <p>24 BY MR. ACKELSBURG:</p> <p>25 Q. My question was, like what?</p>	<p style="text-align: right;">Page 168</p> <p>1 There was a reserve account established, like I said</p> <p>2 previously, to cover the two to three days' worth of</p> <p>3 originations that they provided. Whether they chose</p> <p>4 to use some of those funds to help them originate</p> <p>5 loans or whether they used other third-party</p> <p>6 capital, I'm not aware of.</p> <p>7 BY MR. ACKELSBURG:</p> <p>8 Q. Okay. And the same was true of Great</p> <p>9 Plains Lending?</p> <p>10 A. Yes, I believe so.</p> <p>11 Q. And what about Plain Green?</p> <p>12 A. Plain Green, that was the -- as you're</p> <p>13 aware, the first transaction that we entered into.</p> <p>14 I don't think the reserve concept was introduced</p> <p>15 with them. Like I said, I know that they had an</p> <p>16 existing lending relationship with Encore or</p> <p>17 whoever. They had other capital means. So, no,</p> <p>18 there was no reserve -- initial -- initial reserve</p> <p>19 concept, as I recall. Whether we amended that</p> <p>20 later, I know that there was suggestions, but I</p> <p>21 can't recall whether that actually happened.</p> <p>22 MR. ACKELSBURG: Okay. This is a good</p> <p>23 time to break.</p> <p>24 THE VIDEOGRAPHER: We are off the</p> <p>25 record at 12:41 p m.</p>

<p style="text-align: right;">Page 169</p> <p>1 (Break taken, 12:41 p m. to 1:22 p m.)</p> <p>2 THE VIDEOGRAPHER: We are back on the</p> <p>3 record at 1:22 p m.</p> <p>4 BY MR. ACKELSBURG:</p> <p>5 Q. Before we broke, Mr. Lutes, we were talking</p> <p>6 about the -- how the loans got funded in the first</p> <p>7 instance, specifically with regard to Plain Green,</p> <p>8 and I want to show you a few agreements and ask</p> <p>9 for -- for your comments.</p> <p>10 A. Sure.</p> <p>11 MR. ACKELSBURG: So the first one, I</p> <p>12 am going to -- I am going to identify it as Exhibit</p> <p>13 P-244.</p> <p>14 (Exhibit No. 244 marked.)</p> <p>15 A. (Reviews document.)</p> <p>16 Okay.</p> <p>17 BY MR. ACKELSBURG:</p> <p>18 Q. Okay. Does this -- does this refresh your</p> <p>19 recollection at all about how the loans got funded</p> <p>20 in the first instance in the beginning of the Plain</p> <p>21 Green relationship?</p> <p>22 MR. SCHEFF: Object to the form.</p> <p>23 A. As I've discussed before, I'm not sure</p> <p>24 whether there were any other capital arrangements</p> <p>25 for Plain Green to help fund loans, but I am</p>	<p style="text-align: right;">Page 171</p> <p>1 with the funding of certain installment loan</p> <p>2 programs." Do you see that?</p> <p>3 A. Yes.</p> <p>4 Q. Okay. So you -- you do remember there</p> <p>5 being a credit facility that Plain Green, LLC, had</p> <p>6 with Haynes Investments in the beginning?</p> <p>7 A. Yes.</p> <p>8 Q. Okay. Do you remember anything about how</p> <p>9 it came to be?</p> <p>10 A. No. I -- I don't recall those initial</p> <p>11 conversations regarding Plain Green, Haynes or even</p> <p>12 us and how we were involved with Haynes.</p> <p>13 Q. Okay. And let me show you another</p> <p>14 agreement.</p> <p>15 MR. ACKELSBURG: This one is 245.</p> <p>16 (Exhibit No. 245 marked.)</p> <p>17 A. (Reviews document.)</p> <p>18 Okay.</p> <p>19 BY MR. ACKELSBURG:</p> <p>20 Q. Do you remember this agreement?</p> <p>21 A. Yes, I do.</p> <p>22 Q. And why don't you explain to me what the</p> <p>23 purpose of this agreement was?</p> <p>24 A. The purpose of this agreement was for us to</p> <p>25 lend money to Haynes Investment.</p>
<p style="text-align: right;">Page 170</p> <p>1 familiar with the Haynes Investment to Plain Green,</p> <p>2 LLC.</p> <p>3 BY MR. ACKELSBURG:</p> <p>4 Q. And so at the inception of the product,</p> <p>5 Mr. Haynes, through this entity Haynes Investment,</p> <p>6 provided \$2 million in lending capital to the tribe;</p> <p>7 am I right, to -- to Plain Green, LLC?</p> <p>8 MR. SCHEFF: Object to the form.</p> <p>9 A. I'm not sure I would use the term "lending</p> <p>10 capital." Working capital for the -- for the</p> <p>11 program, yeah.</p> <p>12 BY MR. ACKELSBURG:</p> <p>13 Q. Okay. Well, in fact, it had to be used to</p> <p>14 fund loans. It couldn't be used for any other</p> <p>15 purpose; isn't that what the -- wasn't that your</p> <p>16 understanding of what the purpose of this was? I'm</p> <p>17 not asking for your legal opinion.</p> <p>18 A. No, no, I'm just -- I wasn't a hundred</p> <p>19 percent certain whether it was required just for</p> <p>20 funding the loans or whether it could be used for</p> <p>21 other working capital related to the -- the loan</p> <p>22 program.</p> <p>23 Q. Okay. I see.</p> <p>24 You'll see that under the Recital B, "The</p> <p>25 credit facility will be used to assist the borrower</p>	<p style="text-align: right;">Page 172</p> <p>1 Q. So that Haynes Investment could lend it to</p> <p>2 Plain Green, right?</p> <p>3 A. Correct.</p> <p>4 Q. Okay. And, in fact, I recall it was either</p> <p>5 the deposition of -- it was one of the Lindas where</p> <p>6 she kind of described there actually was a bank</p> <p>7 account that was a -- was a Haynes bank account and</p> <p>8 a Plain Green bank account where -- and a -- and a</p> <p>9 Think -- I forgot which entity it was which --</p> <p>10 MR. SCHEFF: Let him finish his</p> <p>11 question.</p> <p>12 BY MR. ACKELSBURG:</p> <p>13 Q. I forgot what the name of the Think entity</p> <p>14 was, but there actually were -- there was actually a</p> <p>15 tran- -- on occasion, a transfer of money</p> <p>16 facilitated by the finance department staff from the</p> <p>17 Think Finance account to the Haynes account to the</p> <p>18 Plain Green funding account. Right? And so you're</p> <p>19 familiar that that was -- that there was actually a</p> <p>20 Think Finance operation that corresponded to these</p> <p>21 agreements?</p> <p>22 A. Yes.</p> <p>23 Q. Okay. What was the purpose of Think</p> <p>24 Finance giving money to Haynes to give to the tribe?</p> <p>25 MR. SCHEFF: Object to the form.</p>

<p style="text-align: right;">Page 173</p> <p>1 A. I'll go ahead and answer. Like I said, I 2 wasn't sure exactly, you know, whose idea it was to 3 set the lending relationship this way, you know -- 4 you know, us to Haynes, Haynes to Plain Green, or -- 5 instead of us directly to Plain Green or Plain Green 6 from someone else. I think -- because I wasn't 7 involved act- -- as I mentioned earlier, actively 8 involved in the discussion. As the CFO, I was more 9 concerned about, you know, the ultimate repayment of 10 any loan, whether it was our loan to Haynes or 11 loan -- corresponding loan to Plain Green. 12 And so, you know, regardless of how we set 13 it up, in retrospect, what I was comfortable with -- 14 or what I was told at the time is, well, one, Haynes 15 introduced us to Plain Green. Haynes has done 16 previous financings with Plain Green. So I think 17 there was a comfort level of -- in terms of 18 providing funds from Think Finance, ultimately, you 19 know, to Plain Green, that it was the preference, my 20 guess, of Haynes and the Plain Green Chippewa Cree 21 tribe to have them have an existing lending 22 relationship, because they had had prior existing 23 lending relationships. 24 We had met Steven Haynes. I think, from 25 my perspective, as the CFO, even though I didn't --</p>	<p style="text-align: right;">Page 175</p> <p>1 tribe. 2 And, two, I also kind of viewed it as 3 there's two sources of repayment. You know, we're 4 also, you know, clearly entering into a business 5 relationship with the Chippewa Cree Plain Green. 6 So, you know, I know ultimately my first source of 7 repayment is from Haynes, but, you know, he 8 technically is being repaid by Plain Green. So 9 if -- if Haynes doesn't repay us, I can always go to 10 Plain Green, you know, through our relationship, and 11 say, hey, you know, you borrowed from Haynes, and we 12 had lent to Haynes, you owe us since Haynes is 13 renegeing on this deal. 14 Q. And do you think it was -- it was largely 15 Think that drove the decision to structure it this 16 way as opposed to -- 17 A. No, no. Well, I don't recall. I believe 18 it was a comfort level between Plain Green and 19 Haynes, because Plain Green had done business with 20 Haynes before. Appreciate, from their perspective, 21 they had generally never met us before. I mean, you 22 know, I think they felt much more comfortable 23 interacting with Steven. Steven had introduced us 24 to them, is my understanding. 25 From my perspective, I believe it was a</p>
<p style="text-align: right;">Page 174</p> <p>1 I can't say that I came up with this, we've got to 2 lend to Haynes and Haynes has got to lend to the 3 tribe, I got comfortable, because, from my 4 perspective, I'm ultimately, as CFO, concerned about 5 repayment. And it seemed a lot easier to be repaid 6 by Haynes than necessarily by the tribe in the event 7 that -- like in any -- I always assume any -- any 8 business deal can go sideways. If I ended up in 9 court, I would rather end up in court with Steven 10 Haynes as an individual than, you know, the Plain 11 Green tribe that I had never done business with 12 before. 13 BY MR. ACKELSBURG: 14 Q. So you think this might have been actually 15 to provide some sense of security to Think? 16 A. I wouldn't phrase it that way. I said in 17 retrospect, as the CFO, I would be more comfortable 18 lending to Haynes and Haynes lending to the tribe 19 rather than Think Finance lending directly to the 20 tribe, because I would view, again, that in the 21 event that the deal went sideways, two things: One, 22 it's easier for -- I believe easier for us to sue 23 or, you know, whatever it takes to get our money 24 back from Haynes, than it would be to go through the 25 process of trying to get our money back from a</p>	<p style="text-align: right;">Page 176</p> <p>1 comfortable level that Haynes and Plain Green had 2 with each other that, hey, if we're going to be 3 lending money, have Think lend to Haynes, have 4 Haynes lend to Plain Green. That's my belief. 5 Q. How -- was this just another cost that was 6 reimbursed, or was -- did this come out of the -- 7 I'm talking about the -- so the interest cost to the 8 tribe, whether -- whether you look at it as getting 9 the money from Think or you're looking at it as 10 getting the money from Haynes, the tribe is 11 borrowing money at -- what was it, 6 percent? I'm 12 trying to remember what -- you know, help me -- help 13 me remember what the terms were. 14 A. Well, let's look at the actual agreement. 15 On page 2, Section 2.3, it says, "The rate of 16 interest will bear at 5 percent per annum," which at 17 that time was probably, you know, fair value. 18 Q. And the same 5 percent Think to -- Think to 19 Haynes, right? 20 A. Yeah. 21 Q. Yeah. Okay. 22 So what I'm asking is, was that -- we -- 23 in other depositions we've gone through the whole 24 way that -- that the tribe's expenses were 25 reimbursable through the program.</p>

<p style="text-align: right;">Page 177</p> <p>1 A. The program-related expenses?</p> <p>2 Q. Yes. Yes. And would this be considered a</p> <p>3 program-related expense, that the interest -- the</p> <p>4 interest expense under these credit agreements?</p> <p>5 A. Yeah, I -- I don't recall off the top of my</p> <p>6 head. I'm assuming that because these are</p> <p>7 stand-alone credit agreements separate from the</p> <p>8 master participation agreement, which typically</p> <p>9 would handle the reimbursements that are program</p> <p>10 related between the tribe and GPLS, that, no, that</p> <p>11 they wouldn't be subject to that master</p> <p>12 participation agreement, that the tribe would be</p> <p>13 responsible for paying 5 percent interest to Haynes</p> <p>14 and Haynes would be responsible for paying 5 percent</p> <p>15 interest to us.</p> <p>16 Q. So would then -- and would Think, in its</p> <p>17 distribution to the tribe, then reduce the</p> <p>18 tribe's -- the tribe's program revenue by the amount</p> <p>19 that they owed to -- the amount that they owed under</p> <p>20 this credit facility?</p> <p>21 A. I don't recall whether we netted that as</p> <p>22 just part of, like, a monthly settlement that, hey,</p> <p>23 you know, here's, you know, what you owe -- what you</p> <p>24 owe us from a marketing standpoint and a licensing</p> <p>25 fee standpoint, and, by the way -- you know, I'm not</p>	<p style="text-align: right;">Page 179</p> <p>1 wouldn't actually have to lay that money out; it was</p> <p>2 really just money in, money out, right? They'd get</p> <p>3 the reimbursement from -- from GPLS, and then the</p> <p>4 money would effectively --</p> <p>5 A. Yeah, I'd probably refer you back to Linda</p> <p>6 Rogenski and Linda Callnin's testimony. But, I</p> <p>7 mean, the way I would have conceptualized it is, is</p> <p>8 that literally on the same day of every month end</p> <p>9 when we kind of settled the month-end books,</p> <p>10 TailWind would bill Plain Green or the other tribes</p> <p>11 a certain marketing fee. They'd bill them a</p> <p>12 Decision Sciences fee. The tribes would pay that</p> <p>13 full amount, but on that same day, the tribes would</p> <p>14 also be reimbursed by GPLS.</p> <p>15 So they were gross transactions, because</p> <p>16 they're individual transactions. We're not netting</p> <p>17 it. But that, you know, it all happened on the same</p> <p>18 day. Because, clearly, I mean, again, the tribes</p> <p>19 are somewhat capital constrained and, you know, the</p> <p>20 marketing fee or the licensing fee could be a pretty</p> <p>21 large dollar amount and they need to be reimbursed</p> <p>22 that same day by 99 percent.</p> <p>23 Q. And --</p> <p>24 A. So it all happens on the same day. I'm</p> <p>25 just not sure -- I would not agree that it's all</p>
<p style="text-align: right;">Page 178</p> <p>1 sure how it eventually got settled, if it was net or</p> <p>2 whether it was gross.</p> <p>3 Q. Well, with regard to for, example, the --</p> <p>4 the TailWind and the TCDS fees, the tribes never</p> <p>5 paid that, right?</p> <p>6 MR. SCHEFF: Object to the form.</p> <p>7 A. I'm confused by the question. Can you say</p> <p>8 that again? You said that they --</p> <p>9 BY MR. ACKELSBURG:</p> <p>10 Q. Well, the tribes never had to actually pay</p> <p>11 that, right? They would just -- there would be</p> <p>12 money in from GPLS to pay that bill, and then it</p> <p>13 would be paid. It was just money in, money out. It</p> <p>14 was not a -- it was a wash every month. I think we</p> <p>15 already went through this.</p> <p>16 A. No, I don't -- I don't think that's my</p> <p>17 understanding. My understanding is I think it would</p> <p>18 have been split 1 percent/99 percent. So the tribe</p> <p>19 would have been responsible for settling up on the</p> <p>20 marketing fee directly with TailWind Marketing, the</p> <p>21 same with TC Decision Sciences. Typically on the</p> <p>22 same day, the tribe would settle with GPLS for</p> <p>23 99 percent of that applicable amount.</p> <p>24 Q. Right. So -- so at least as to 99 percent</p> <p>25 of the fees charged by TCDS and TailWind, the tribe</p>	<p style="text-align: right;">Page 180</p> <p>1 just kind of netted together. I think there's</p> <p>2 individual transactions that end up netting on the</p> <p>3 same day.</p> <p>4 Q. I see. You read the transcripts for Linda</p> <p>5 Rogenski and Linda Callnin?</p> <p>6 A. No, I did not.</p> <p>7 Q. Oh, you didn't? Okay.</p> <p>8 A. Sorry.</p> <p>9 Q. And that -- and other expenses that the</p> <p>10 tribes incurred were handled the same way as the --</p> <p>11 as the TailWind and the -- and the TCDS fees; in</p> <p>12 other words, if the tribes incurred program-related</p> <p>13 expenses, like, for example, their legal fees, that</p> <p>14 was reimbursed by GPLS, right?</p> <p>15 MR. SCHEFF: Object to the form.</p> <p>16 A. The -- the expenses that would be</p> <p>17 reimbursed by GPLS to Plain Green or to any of the</p> <p>18 other two tribes would either have been directly</p> <p>19 outlined in the master participation agreement, or</p> <p>20 in the event that, for some reason, that master</p> <p>21 participation agreement was somewhat ambiguous as to</p> <p>22 whether the expense should be reimbursed, there</p> <p>23 would probably be separate phone calls, whatnot,</p> <p>24 related to agreeing to whether or not it ended up</p> <p>25 being reimbursed. So, I mean, I'm sure there was --</p>

<p style="text-align: right;">Page 181</p> <p>1 BY MR. ACKELSBURG:</p> <p>2 Q. Phone calls to who?</p> <p>3 A. I would say phone calls probably between</p> <p>4 Plain Green -- for instance, Billi Anne saying: I</p> <p>5 have incurred X legal expense. You know, we believe</p> <p>6 that this is program related and should be</p> <p>7 reimbursed by GPLS, but it's not necessarily spelled</p> <p>8 out in the participation agreement. We'll submit</p> <p>9 the invoice. You know, do you agree and can you,</p> <p>10 you know, agree that GPLS and us, as the admin</p> <p>11 agent, kind of, you know, moving the funds between</p> <p>12 GPLS and Plain Green? You know, it would probably</p> <p>13 be, like, Michelle Nguyen or Jason Harvison that</p> <p>14 would typically sign off on that type of expense if</p> <p>15 it was, indeed, reimbursable. Of if it wasn't, they</p> <p>16 would probably, you know, have the conversation or</p> <p>17 an e-mail explaining, no, we feel this is something</p> <p>18 that's outside the program and the tribe has to</p> <p>19 absorb this expense themselves.</p> <p>20 Q. And your recollection or belief is that</p> <p>21 the -- that the interest expense from the Haynes</p> <p>22 transaction was not treated as a programming</p> <p>23 expense, that it was something that the tribe had to</p> <p>24 take care of itself?</p> <p>25 A. I don't recall whether -- whether they paid</p>	<p style="text-align: right;">Page 183</p> <p>1 between yourself, various people from either Victory</p> <p>2 Park or Katten, right?</p> <p>3 A. Correct.</p> <p>4 Q. And also Ken Rees. Angela McQuien was --</p> <p>5 was your account --</p> <p>6 A. McQuien.</p> <p>7 Q. McQuien -- was your accounting?</p> <p>8 A. She was my chief accounting officer.</p> <p>9 Q. Right. And Paul Tauber, you mentioned he</p> <p>10 was outside counsel?</p> <p>11 A. Yes.</p> <p>12 Q. And you make reference to the conversation</p> <p>13 you had with Rick Eckman about changing this and --</p> <p>14 what you're talking about is changing the -- the</p> <p>15 change in point 1 in your initial e-mail, it's with</p> <p>16 regards to the -- to the funding the credit</p> <p>17 agreements we were just looking at, right?</p> <p>18 A. Correct.</p> <p>19 Q. Yeah. Okay. And so you said you talked to</p> <p>20 Rick Eckman yesterday and he's now comfortable with</p> <p>21 eliminating the Haynes loan to the tribe. Now, when</p> <p>22 you were talking with Rick Eckman, was that in his</p> <p>23 capacity as counsel to the tribe or counsel to</p> <p>24 Haynes?</p> <p>25 A. I believe at that --</p>
<p style="text-align: right;">Page 182</p> <p>1 it or whether it was one of those types of lending</p> <p>2 relationships where it accrues but is really not</p> <p>3 paid until ultimately when the loan is ultimately</p> <p>4 repaid at the end. I can't recall if they paid</p> <p>5 us -- paid Haynes and Haynes paid us on a monthly</p> <p>6 basis or it just continued to accrue interest and</p> <p>7 settled all at the end. From my perspective, it was</p> <p>8 rather immaterial to the overall relationship.</p> <p>9 MR. ACKELSBURG: Okay. All right.</p> <p>10 Let's look at another document, 246.</p> <p>11 (Exhibit No. 246 marked.)</p> <p>12 BY MR. ACKELSBURG:</p> <p>13 Q. And just so you understand that the -- on</p> <p>14 the lower right-hand corner, this Bates is a</p> <p>15 different -- has a different prefix. You see it</p> <p>16 says GPLP. That means we got it from Victory Park.</p> <p>17 Okay?</p> <p>18 A. Okay. Can I have a quick minute --</p> <p>19 Q. Oh, of course. Yeah, yeah.</p> <p>20 A. -- to read the e-mail chain? Because I see</p> <p>21 that it was coming from me originally.</p> <p>22 (Reviews document.)</p> <p>23 Okay.</p> <p>24 Q. My question -- well, first of all, so this</p> <p>25 is -- as you can see, it's an exchange, June 2012,</p>	<p style="text-align: right;">Page 184</p> <p>1 MR. SHAPIRO: Object to form.</p> <p>2 A. I am going to go ahead and answer, if</p> <p>3 that's okay.</p> <p>4 MR. SCHEFF: Yeah.</p> <p>5 A. I believe that he was representing the --</p> <p>6 the Plain Green tribe at that point in time.</p> <p>7 And just to clarify some of my earlier</p> <p>8 testimony, I wasn't sure if he was involved</p> <p>9 originally with the Plain Green negotiations, but I</p> <p>10 do recall at this point in time, especially after we</p> <p>11 had already signed the deal with Tunica and he had</p> <p>12 represented to Tunica, that I do believe that he had</p> <p>13 gotten involved in representing the Plain Green</p> <p>14 tribe as their outside counsel.</p> <p>15 BY MR. ACKELSBURG:</p> <p>16 Q. Okay. So there -- and do you remember that</p> <p>17 there was -- so do you remember, like, this topic,</p> <p>18 that there was an idea that Haynes' role on the</p> <p>19 funding of originations would -- would end and that</p> <p>20 you would use -- it would use another vehicle to</p> <p>21 fund the loans?</p> <p>22 MR. SCHEFF: Object to the form.</p> <p>23 A. I'll answer. From my perspective, what I</p> <p>24 liked, and as I think I mentioned before lunch, you</p> <p>25 know, the Plain Green was the first deal, and so it</p>

<p style="text-align: right;">Page 185</p> <p>1 didn't have this concept of the GPLS, you know, 2 reserve to kind of protect against the two to three 3 days of originations. And so with -- and I think it 4 might have been Eckman that might have suggested 5 that when he represented Tunica the first time 6 around of creating that concept. And I liked that. 7 And I liked it for -- for one main reason, 8 from my perspective, as the corporate CFO of overall 9 Think Finance, with the Plain Green deal, we were 10 lending money out of our corporate cash availability 11 to Haynes. Haynes was lending that to Plain Green. 12 I think that's what these agreements encompass. 13 Under the other two deals with 14 Otoe-Missouria and Tunica, the GPLS reserve, because 15 it was -- they were provided in case the tribes -- 16 you know, GPLS decided, as we talked about before, 17 to stop purchasing, the tribes could use that to 18 originate the loans. That was money coming from 19 Victory Park Capital or other investors in GPLS. 20 And so by -- the main reason why I was 21 talking with Rick, who, at that point was then 22 representing Plain Green, I said: I liked what you 23 came up with with the Tunica deal. You know, we'd 24 love to have GPLS create this two- to three-day 25 reserve and have Plain Green use that to kind of</p>	<p style="text-align: right;">Page 187</p> <p>1 A. I think it's because the -- 2 MR. SCHEFF: You've got to wait until 3 he finishes. 4 A. I apologize. 5 BY MR. ACKELSBURG: 6 Q. Well, it's just -- I think you hear it. I 7 mean, whether -- whether -- what does the CFPB have 8 to do with the -- with the Haynes deal? Why would 9 considerations regarding the CFPB enter into the 10 decision about Haynes? 11 MR. SCHEFF: Object to the form; 12 compound question. 13 You can answer whatever question you 14 choose. 15 BY MR. ACKELSBURG: 16 Q. You can answer the second one. 17 A. As I recall, at the time, that is when the 18 tribes, as well as, I think, us, received a CID, 19 civil investigative demand, from the CFPB, well, 20 right around what we would label kind of a fishing 21 expedition where they wanted a lot of information 22 related to the tribal programs. I think we received 23 -- the tribes and us received that right around that 24 time. 25 So assuming Rick was just saying: Hey, we</p>
<p style="text-align: right;">Page 186</p> <p>1 cover their capital needs, so to speak, and we then 2 get repaid out of that amount. The tribe would 3 repay Haynes and Haynes would repay us, and that 4 frees up my corporate cash for any reason. 5 BY MR. ACKELSBURG: 6 Q. Good. Okay. 7 A. So from my perspective, it was kind of a 8 return of capital to Think Finance. 9 MR. ACKELSBURG: All right. Some more 10 e-mails on the same topic let's have you look at. 11 This is 247. 12 (Exhibit No. 247 marked.) 13 A. (Reviews document.) 14 Okay. This is, like, one or two-weeks 15 later it looks like from the prior e-mail. 16 BY MR. ACKELSBURG: 17 Q. Yeah. Yeah. And you're -- it looks like 18 you're still trying to push this. And then you get 19 a response from Rick Eckman on June 19th, "We should 20 think about doing this in light of the CFPB CID." 21 Do you remember any connection, like, 22 what -- do you understand what this has to do with 23 a -- with the CF- -- why there would be some 24 decision -- why the CFPB CID would play any role in 25 the decision of whether to change the Haynes --</p>	<p style="text-align: right;">Page 188</p> <p>1 just got this notice from the CFPD, that the -- the 2 CFPB, that they're interested in, you know, all of 3 this stuff. He's representing Plain Green, and so 4 I'm sure they probably, from his perspective, just 5 wanted time to kind of digest exactly what was 6 exactly going on with that CID request. 7 Q. But do you know why he thought that taking 8 Haynes out and using the reserve concept would -- 9 would be a good idea in light of the CFPB's action? 10 MR. SCHEFF: Object to the form; 11 mischaracterizes the document. 12 You can answer the question. 13 A. Yeah, I'll answer the question. I don't 14 think that's -- my interpretation of this e-mail 15 chain, that's not what he was getting at at all. It 16 was, as I just said: Hey, we just got -- my tribe 17 just got a CID. Before we amend anything, whether 18 it's Haynes or anything else, we need time to sit 19 down legally and think about, you know, what the 20 CFPB just issued to us. That's where I'm coming 21 from with this. That's my interpretation of this 22 e-mail chain. 23 (Exhibit No. 248 marked.) 24 BY MR. ACKELSBURG: 25 Q. Look at 248. It's later in the year. It's</p>

<p style="text-align: right;">Page 189</p> <p>1 some more e-mails on the same subject.</p> <p>2 A. (Reviews document.)</p> <p>3 Okay.</p> <p>4 Q. It looks like the -- there's still some</p> <p>5 discussions going on about Haynes. It's -- there's</p> <p>6 now reference to something called a "Put Agreement."</p> <p>7 You remember that, right? Or what's a put</p> <p>8 agreement?</p> <p>9 A. A put agreement, my basic understanding as</p> <p>10 a CFO, it allows somebody to kind of sell or put the</p> <p>11 assets to somebody else upon an agreed upon</p> <p>12 contractual --</p> <p>13 MR. SHELDON: Pardon me for a second.</p> <p>14 I actually need to talk to the -- to the witness</p> <p>15 about a privilege issue, Irv. If we can just go</p> <p>16 offline for a second, if we could step outside.</p> <p>17 THE VIDEOGRAPHER: We are off record</p> <p>18 at 1:50 p m.</p> <p>19 (Break taken, 1:50 p m. to 1:51 p m.)</p> <p>20 THE VIDEOGRAPHER: We are back on the</p> <p>21 record at 1:51 p m.</p> <p>22 MR. SHELDON: The document that was</p> <p>23 just introduced as an exhibit, TF-PA 608431, is an</p> <p>24 e-mail chain, and the very top communication in that</p> <p>25 e-mail chain is a privileged communication that was</p>	<p style="text-align: right;">Page 191</p> <p>1 have to review these agreements?" Right?</p> <p>2 A. Yes, that's -- that's my statement.</p> <p>3 Q. He responds, "We're" -- "We are</p> <p>4 representing Plain Green. I will send to Dan</p> <p>5 Belcourt to review." Do you see that?</p> <p>6 A. Yes, I see that.</p> <p>7 Q. So when you asked him is it possible --</p> <p>8 when you asked him who's representing Plain Green or</p> <p>9 who's going to review this on behalf of Plain Green,</p> <p>10 is it possible that you were thinking at that point</p> <p>11 that he -- he was in these discussions on behalf of</p> <p>12 Mr. Haynes?</p> <p>13 MR. SCHEFF: Object to the form.</p> <p>14 A. I don't believe so. I mean, I may be wrong</p> <p>15 on that. My interpretation when I look at that line</p> <p>16 is that I -- as I mentioned earlier, I felt that at</p> <p>17 this point in time, that Rick Eckman was</p> <p>18 representing Plain Green. And I think what I was</p> <p>19 getting at, "Rick, any idea who Plain Green will</p> <p>20 have review these agreements," who at Plain Green is</p> <p>21 going to sign off on this, not just you, Rick</p> <p>22 Eckman; is it going to be Billi Anne or somebody</p> <p>23 else within the tribal lending or tribal council</p> <p>24 sign off on this? That's where I think my comment</p> <p>25 was coming from.</p>
<p style="text-align: right;">Page 190</p> <p>1 inadvertently produced by Think Finance. We are</p> <p>2 going to exercise our right to claw back that</p> <p>3 communication in this document pursuant to the</p> <p>4 protective order in this matter, which we will do</p> <p>5 subsequent to this deposition. I have agreed with</p> <p>6 opposing counsel that for purposes of this</p> <p>7 deposition only, he may ask the witness questions</p> <p>8 regarding this document concerning the e-mail chain</p> <p>9 prior to the privileged communication, which we both</p> <p>10 understand to be the top communication on the e-mail</p> <p>11 chain. Agreed?</p> <p>12 MR. ACKELSBURG: Agreed.</p> <p>13 MR. SHELDON: Thank you.</p> <p>14 BY MR. ACKELSBURG:</p> <p>15 Q. So my first question is -- well, let's --</p> <p>16 you told us what -- you gave an explanation of what</p> <p>17 a put agreement is. Let's -- I'm going to show you</p> <p>18 what I think is a put agreement in a minute. So why</p> <p>19 don't we just leave it until we're actually looking</p> <p>20 at the put agreement.</p> <p>21 But you see that you're asking -- it looks</p> <p>22 like in this -- in the -- in the e-mail on the first</p> <p>23 page where you're communicating with Rick Eckman,</p> <p>24 November 14th, right, and you say, "Rick," at the</p> <p>25 end of your e-mail, "any idea who Plain Green will</p>	<p style="text-align: right;">Page 192</p> <p>1 BY MR. ACKELSBURG:</p> <p>2 Q. All right. So let me give you another</p> <p>3 document, which will be 249. And I apologize for</p> <p>4 this being a little bit out of chronological</p> <p>5 sequence.</p> <p>6 (Exhibit No. 249 marked.)</p> <p>7 MR. SCHEFF: Hey, Matt, same issue.</p> <p>8 MR. ACKELSBURG: Well, Eckman is in</p> <p>9 here.</p> <p>10 THE WITNESS: Yeah, but so is Paul</p> <p>11 Tauber.</p> <p>12 MR. SCHEFF: Just wait. Just --</p> <p>13 let -- this is Matt's issue.</p> <p>14 MR. SHELDON: Let me step out in the</p> <p>15 hall and talk to the client, please. Just bear with</p> <p>16 me.</p> <p>17 MR. ACKELSBURG: Okay.</p> <p>18 VIDEOGRAPHER: We are off record at</p> <p>19 1:55 p m.</p> <p>20 (Break taken, 1:55 p m. to 1:57 p m.)</p> <p>21 THE VIDEOGRAPHER: We are back on the</p> <p>22 record at 1:57 p m.</p> <p>23 BY MR. ACKELSBURG:</p> <p>24 Q. So, again, I apologize for giving you these</p> <p>25 out of -- out of sequence. This one is -- we're now</p>

<p style="text-align: right;">Page 193</p> <p>1 back in September of 2012. Do you see?</p> <p>2 A. Uh-huh (affirmative response).</p> <p>3 Q. And so you're in conversation with --</p> <p>4 again, with Mr. Tauber and Mr. Eckman, and you're</p> <p>5 saying that we finally figured out a way to get TF</p> <p>6 from lending money to Haynes who then lends money to</p> <p>7 PGL. Do you see that?</p> <p>8 A. Yes, I do.</p> <p>9 Q. Okay. Now, the thing that confused me</p> <p>10 about this is you're talking about now a deal where</p> <p>11 there's a 15 percent loan to some -- made by some</p> <p>12 investment fund associated with Haynes to the tribe.</p> <p>13 Right? And then you would then reimburse that fund?</p> <p>14 A. Can I have one minute to read it?</p> <p>15 Q. Oh, sure.</p> <p>16 A. Because when I stepped outside, I didn't</p> <p>17 have a -- I just. . .</p> <p>18 (Reviews document.)</p> <p>19 Okay.</p> <p>20 Q. So we before looked at the original credit</p> <p>21 facility agreements, and it was for 5 percent money</p> <p>22 loaned by Haynes to Plain Green and then 5 percent</p> <p>23 Think Finance lending money to Haynes, right?</p> <p>24 A. That's correct.</p> <p>25 Q. All right. So at this point, it looks like</p>	<p style="text-align: right;">Page 195</p> <p>1 BY MR. ACKELSBURG:</p> <p>2 Q. I used the wrong term, "lending money."</p> <p>3 But, I mean, what you -- what you say here is you</p> <p>4 would pay or reimburse. So the idea is that this</p> <p>5 would be a -- basically, a program expense that</p> <p>6 would be reimbursed by GPLS; isn't that what you</p> <p>7 mean?</p> <p>8 A. No, I don't believe it would be reimbursed</p> <p>9 by GPLS. I believe that the 15 percent would be</p> <p>10 paid directly by Think Finance.</p> <p>11 Q. Oh, okay.</p> <p>12 A. I may be mistaken on that but. . .</p> <p>13 Q. Okay. All right. I stand corrected.</p> <p>14 But -- so whoever it is that's paying the</p> <p>15 reimbursement, it -- so before Think Finance was</p> <p>16 providing money at 5 percent to Haynes, who was then</p> <p>17 providing money at 5 percent to Think, to -- to</p> <p>18 Plain Green?</p> <p>19 A. Can I reverse that? Haynes would be paying</p> <p>20 us 5 percent and the tribe would be paying Haynes</p> <p>21 5 percent. You made it sound like we were paying</p> <p>22 5 percent.</p> <p>23 Q. I'm sorry, you're -- it's late in the day,</p> <p>24 and you're absolutely right.</p> <p>25 The other thing that I'm trying to</p>
<p style="text-align: right;">Page 194</p> <p>1 what's being contemplated, this -- this thing that</p> <p>2 you figured out, is still going to be you lending</p> <p>3 money to some intermediary who would then lend money</p> <p>4 to the tribe, only here instead of it being Haynes,</p> <p>5 it would be some investment fund that he would --</p> <p>6 that he would put together, right? I mean, that's</p> <p>7 one change; am I right?</p> <p>8 MR. SCHEFF: Object to the form.</p> <p>9 MR. SHELTON: Object to form.</p> <p>10 BY MR. ACKELSBURG:</p> <p>11 Q. That's in terms of your idea?</p> <p>12 A. Let me explain.</p> <p>13 Q. I will let you explain. I just want to</p> <p>14 first identify just the two things that are going to</p> <p>15 be different than the original, and then you can</p> <p>16 explain how -- what -- how this works.</p> <p>17 One change would be instead of the</p> <p>18 intermediary being Haynes Investment, it would be</p> <p>19 some fund that would be independent from Haynes</p> <p>20 somehow, right?</p> <p>21 MR. SCHEFF: Object to the form.</p> <p>22 A. I wouldn't agree with that because we would</p> <p>23 not be lending to this fund. This fund would be</p> <p>24 raised from other outside capital not related to</p> <p>25 Think Finance.</p>	<p style="text-align: right;">Page 196</p> <p>1 understand, the other change, is that that 5 percent</p> <p>2 is now going to become 15 percent, that the tribe</p> <p>3 would now be charged 15 percent by this entity and</p> <p>4 that Think Finance would reimburse the tribe for</p> <p>5 that expense. Why in the world was this being --</p> <p>6 being discussed at this time?</p> <p>7 A. Can I explain now? Okay. Because this --</p> <p>8 pardon me, this might be a little long-winded, but</p> <p>9 I'll try and keep it shorter than some of my prior</p> <p>10 answers.</p> <p>11 Again, from -- from my perspective, what I</p> <p>12 wanted to do as the corporate CFO related to the</p> <p>13 Haynes relationship, appreciate this point in time</p> <p>14 the amount of money that we've lent Haynes and</p> <p>15 Haynes has lent to Plain Green has now increased</p> <p>16 from the original 2 million amount. I am going to</p> <p>17 guess it was somewhere between 5- and 10 million.</p> <p>18 It's a pretty significant amount of capital for us</p> <p>19 that I would love to get repaid and reallocate to</p> <p>20 other products or for other, you know, corporate</p> <p>21 reasons. So that was my intent as the CFO is how</p> <p>22 can I get back my capital quicker?</p> <p>23 The original concept, you know, when I --</p> <p>24 the proposal when we went ahead a little bit was,</p> <p>25 well, let's take this interest reserve that we had</p>

<p style="text-align: right;">Page 197</p> <p>1 implemented with Tunica and implement that and have 2 GPLS, you know, through monies lent to GPLS by VPC, 3 move that money to -- to Plain Green to handle this, 4 and then Plain Green would repay Haynes and Haynes 5 would repay us. 6 And under that concept, if -- 7 theoretically, VPC would probably have to lend more 8 money into GPLS to now cover the two to three days' 9 worth of originations. And remember, on the credit 10 default swap -- and this is where it will start to 11 make sense now -- you know, we're paying, you know, 12 VPC, GPLS, I am going to guess, 18 to 20 percent. 13 You know, they get a fixed return, and that comes 14 out of our credit default premium. 15 So, in essence, by -- under my concept in 16 that previous e-mail, we're going to have to pay -- 17 not "we," but it reduces our credit default premium 18 by, roughly, 18 to 20 percent for the amount that 19 they're putting in to do this. 20 What Haynes came back and proposed in this 21 e-mail, and I think it was a way for Mr. Haynes to 22 also continue to profit off of the arrangement, was 23 he said: I can go out and find -- rather than doing 24 that concept, Chris, I can go out and find a group 25 of investors, put together a fund, raise 10- to</p>	<p style="text-align: right;">Page 199</p> <p>1 All right. Let's -- there are a few more 2 of these and -- about this issue. 3 MR. ACKELSBURG: This one is a 250. 4 (Exhibit No. 250 marked.) 5 A. May I have a moment to read before you ask 6 the question? 7 BY MR. ACKELSBURG: 8 Q. Of course. 9 A. Thank you. 10 (Reviews document.) 11 Okay. 12 Q. So you see this is an e-mail exchange 13 between you and Michelle Nguyen in January of 2013, 14 and -- and you see in the middle where Michelle asks 15 you, "Is Eckman representing PG or Haynes?" Do you 16 see that? 17 A. Yes, I do. 18 Q. And your answer to her was that, "He is 19 representing Haynes." Do you see that? 20 A. Yes, I am. 21 Q. Okay. So I'm just wondering if your 22 recollection, given that I asked you that same 23 question who's Eckman representing, whether your -- 24 whether that changes your recollection at all 25 or. . .</p>
<p style="text-align: right;">Page 198</p> <p>1 \$15 million, and the fund will lend money to the 2 tribe, the tribe could take that money and repay 3 Haynes and Haynes can repay you, but I am going to 4 have to promise my investors some type of fixed 5 return. But it was going to be lower than what 6 GPLS's fixed return was. 7 So from an economic standpoint, I think, 8 at that point in time, as I recollect, I told 9 Steven: Well, if you can go out and, you know, 10 raise 10- to \$15 million that would lend money to 11 the tribe to give them the working capital that they 12 need to continue to originate loans and cover the 13 reserve and all this and that, and if I can get VPC 14 comfortable with them doing that, I ultimately end 15 up getting my capital back, which is what I wanted 16 from Haynes; and, two, it would actually be at a 17 slightly cheaper cost to me than if VPC put in and 18 created the reserve. 19 Q. I've got it. 20 A. Because VPC -- so that's why. Now, if -- 21 I'll end my answer there. 22 Q. No, I -- 23 A. It was long-winded enough. 24 Q. It may have been long-winded, but it was -- 25 it was very informative. So thank you.</p>	<p style="text-align: right;">Page 200</p> <p>1 A. I don't know what this PG credit agreement 2 relates to. I don't know if it relates to these 3 prior things or if it was something else. So I'm 4 not sure when I say, "He's representing Haynes," and 5 it's referencing this Plain Green credit agreement, 6 but -- credit agreement that it's referencing. 7 Q. Well, let's look at an agreement and see if 8 this might be what you're -- what you're 9 referencing. 10 MR. ACKELSBURG: This is P-251. 11 (Exhibit No. 251 marked.) 12 A. Give me a minute just to. . . 13 (Reviews document.) 14 MR. ACKELSBURG: And, actually, I'll 15 have you look at two agreements at once. There's 16 251, and I'll label this other one 252. 17 (Exhibit No. 252 marked.) 18 A. (Reviews document.) 19 Okay. I think I've refreshed my memory. 20 BY MR. ACKELSBURG: 21 Q. Starting with page 251. So there was a new 22 credit facility set up with an entity called 23 [REDACTED]. This was the outside 24 group that -- that Haynes was previously talking 25 about, right?</p>

<p style="text-align: right;">Page 201</p> <p>1 MR. SCHEFF: Object to the form.</p> <p>2 A. Yes, I believe it was.</p> <p>3 BY MR. ACKELSBURG:</p> <p>4 Q. And do you know anything about [REDACTED]</p> <p>5 [REDACTED] other than they're a signature on</p> <p>6 this agreement?</p> <p>7 A. No, I don't.</p> <p>8 Q. Do you know who Haynes' associates were in</p> <p>9 that -- in that deal, who these outside lenders</p> <p>10 were?</p> <p>11 A. No, I don't.</p> <p>12 Q. You haven't had any connection to the</p> <p>13 casino on the -- on the reservation?</p> <p>14 A. Not that I'm aware of, no.</p> <p>15 Q. Okay. And the put agreement, using my --</p> <p>16 let me see if I can just summarize it quickly.</p> <p>17 We're looking at 252. Is that, basically, in</p> <p>18 effect, Think Finance guaranteeing the payments --</p> <p>19 the repayment owed by the tribe to this [REDACTED]</p> <p>20 [REDACTED] group?</p> <p>21 MR. SCHEFF: Object to the form.</p> <p>22 A. Yes. In looking at the put agreement,</p> <p>23 which struck me is, in essence, it kind of looked</p> <p>24 like it was a corporate guarantee whereby at any</p> <p>25 point in time the transferrer could put the</p>	<p style="text-align: right;">Page 203</p> <p>1 remember who Kirk Tunnell or Tunnell is.</p> <p>2 Q. Okay. All right. That's fine. We'll move</p> <p>3 on to another document.</p> <p>4 (Exhibit No. 254 marked.)</p> <p>5 A. May I have a minute to. . .</p> <p>6 BY MR. ACKELSBURG:</p> <p>7 Q. Of course.</p> <p>8 A. (Reviews document.)</p> <p>9 Okay.</p> <p>10 Q. Do you remember this e-mail -- this e-mail</p> <p>11 exchange?</p> <p>12 A. I don't remember it specifically, but. . .</p> <p>13 Q. But you remember the topic being</p> <p>14 considered?</p> <p>15 A. I remember the topic, yeah.</p> <p>16 Q. And you remember it's something that was</p> <p>17 discussed between you and Tom Welch at Victory Park?</p> <p>18 A. I mean, based on the e-mail chain, yes.</p> <p>19 Q. Well, the -- this -- there were times when</p> <p>20 Mr. Welch would ask you questions -- I mean, you</p> <p>21 were -- you were often, I think you said earlier,</p> <p>22 the contact person for Victory Park. Right?</p> <p>23 A. From a finance department perspective, yes.</p> <p>24 Q. Well, and the issue of what states are the</p> <p>25 tribes lending in was, at times, the subject that</p>
<p style="text-align: right;">Page 202</p> <p>1 agreement to the transferee \$15,000,000.</p> <p>2 Q. Okay. We'll drop that, and I am going to</p> <p>3 move to another subject.</p> <p>4 (Exhibit No. 253 marked.)</p> <p>5 BY MR. ACKELSBURG:</p> <p>6 Q. So what this means is that just -- you may</p> <p>7 see a couple more documents like this. We were</p> <p>8 produced a document native, in Excel form, and in</p> <p>9 the production it was TF-PA 290895. And then what</p> <p>10 I've done is just print out that Excel sheet. Okay.</p> <p>11 You see what I've done?</p> <p>12 A. Okay.</p> <p>13 Q. Okay. So do you remember being interviewed</p> <p>14 by someone named Kirk Tunnell in September of 2011</p> <p>15 as part of a risk -- enterprise risk assessment</p> <p>16 project?</p> <p>17 A. I absolutely do not remember this</p> <p>18 interview.</p> <p>19 Q. Okay.</p> <p>20 A. Or this -- or this template form.</p> <p>21 Q. Well -- okay. So you don't remember the</p> <p>22 interview. This is -- if it's in there in the -- in</p> <p>23 the production, you don't -- it might have happened,</p> <p>24 you just don't remember, right?</p> <p>25 A. It might have happened. I don't even</p>	<p style="text-align: right;">Page 204</p> <p>1 you would discuss with Mr. Welch, right?</p> <p>2 A. I would discuss with Mr. Welch more in the</p> <p>3 context of the expected loan volumes and the</p> <p>4 particular funding needs that GPLS would have based</p> <p>5 on my forecasts, which, yes, would be tied to, you</p> <p>6 know, the states that the tribes are originating</p> <p>7 loans in. So I wouldn't -- it would be -- the</p> <p>8 discussion would be in the context of a forecast and</p> <p>9 expected, you know, funding requirements and loan</p> <p>10 volumes, less about legally why the tribes may be</p> <p>11 lending in a particular state or not lending in a</p> <p>12 particular state.</p> <p>13 Q. Well, what -- what do you know about how</p> <p>14 the decision was made by the tribes to lend in a</p> <p>15 particular state?</p> <p>16 A. Very little. I mean, typically, as this</p> <p>17 e-mail chain, you know, really communicates, you can</p> <p>18 see it was Michelle Nguyen that was communicating to</p> <p>19 me really for forecast purposes so that I could</p> <p>20 update my forecast and have a communication with Tom</p> <p>21 and VPC regarding, you know, here's where, you know,</p> <p>22 changes that are happening in terms of where the</p> <p>23 tribes are originating business. And I would work</p> <p>24 with Michelle and the marketing folks on -- in their</p> <p>25 communications with tribes on how that may impact</p>

<p style="text-align: right;">Page 205</p> <p>1 loan origination volume, so I could just make Tom</p> <p>2 aware of: Hey, this is what could happen from a</p> <p>3 funding origination standpoint and what GPLS may</p> <p>4 need to, you know, incrementally lend to/invest in</p> <p>5 GPLS for origination volumes.</p> <p>6 Q. There were -- there were occasions when</p> <p>7 investors in GPLS would raise questions about, "Why</p> <p>8 are you in this state," or, "Why not in that state,"</p> <p>9 things like that, right? I mean, you would</p> <p>10 sometimes have those kind of questions, right?</p> <p>11 MR. SHAPIRO: Objection to form.</p> <p>12 A. I wouldn't be privy to those discussions.</p> <p>13 Those would have been between VPC and their</p> <p>14 investors.</p> <p>15 BY MR. ACKELSBURG:</p> <p>16 Q. No, I mean -- well, I'm not -- I'm really</p> <p>17 referencing concerns of investors that might have</p> <p>18 been relayed to you via Tom Welch or someone else at</p> <p>19 Victory Park.</p> <p>20 MR. SHAPIRO: So what's your question?</p> <p>21 MR. SCHEFF: What's the question?</p> <p>22 MR. ACKELSBURG: Jeez, let me finish.</p> <p>23 MR. SHAPIRO: Well, it's hard to tell</p> <p>24 when you're done.</p> <p>25 MR. ACKELSBURG: Oh, okay.</p>	<p style="text-align: right;">Page 207</p> <p>1 MR. SHELDON: Object to form.</p> <p>2 MR. SCHEFF: Object to the form.</p> <p>3 A. That -- that gets into a legal aspect that</p> <p>4 it's either privileged or I don't know the answer to</p> <p>5 it. So. . .</p> <p>6 BY MR. ACKELSBURG:</p> <p>7 Q. You don't know that it's -- that online</p> <p>8 lending, like -- let's say that -- right now --</p> <p>9 right now you have -- you're at Elevate and you have</p> <p>10 the product RISE, right?</p> <p>11 MR. SCHEFF: Just wait a second.</p> <p>12 We're not talking about Elevate. You want to ask</p> <p>13 him about Think Finance, you ask about Think</p> <p>14 Finance.</p> <p>15 MR. ACKELSBURG: I'm asking about RISE</p> <p>16 right now.</p> <p>17 MR. SCHEFF: Well, we're not asking</p> <p>18 about RISE as it relates to -- to Elevate. We're</p> <p>19 not going there, Irv. So why don't you ask him</p> <p>20 about Think Finance.</p> <p>21 MR. ACKELSBURG: I'm asking about</p> <p>22 RISE.</p> <p>23 MR. SCHEFF: Go ahead, and then I'll</p> <p>24 direct not to answer.</p> <p>25 BY MR. ACKELSBURG:</p>
<p style="text-align: right;">Page 206</p> <p>1 BY MR. ACKELSBURG:</p> <p>2 Q. So were there occasions where inquiries</p> <p>3 would be communicated from GPLS investors to you via</p> <p>4 Mr. Welch or someone else at Victory Park?</p> <p>5 A. Not that I recall specifically, no.</p> <p>6 Q. Were there occasions where ACH providers or</p> <p>7 potential ACH providers were asking questions of you</p> <p>8 regarding why are you in this state, why you're not</p> <p>9 in that state, things like that?</p> <p>10 A. I would have occasional discussions with</p> <p>11 existing or potential ACH providers regarding where</p> <p>12 loan volume related to the ACH transactions that</p> <p>13 these processors would be responsible for</p> <p>14 processing, what states they would come from. We</p> <p>15 never specifically got into the reasons why the</p> <p>16 tribes lent in one state or another state or not in</p> <p>17 a state. They were more interested in just knowing</p> <p>18 the actual states that they would be processing</p> <p>19 customer ACH transactions. And by "customers,"</p> <p>20 customers of the tribes.</p> <p>21 Q. You're aware, are you not, that the kind of</p> <p>22 lending done by Plain Green or Great Plains -- Great</p> <p>23 Plains Lending or Mobiloans in some states could not</p> <p>24 have been done directly by Think Finance due to the</p> <p>25 laws in particular states?</p>	<p style="text-align: right;">Page 208</p> <p>1 Q. Does RISE lend in Pennsylvania?</p> <p>2 MR. SCHEFF: Don't answer the</p> <p>3 question.</p> <p>4 MR. ACKELSBURG: What's the --</p> <p>5 Richard, under Rule 30, what in the world is your</p> <p>6 basis --</p> <p>7 MR. SCHEFF: I'm sorry, we're -- this</p> <p>8 is not a case about Elevate and Elevate's lending</p> <p>9 and what it does today or at any time. This is</p> <p>10 about Think Finance. And Mr. Lutes is here because</p> <p>11 he was the CFO of Think Finance. And he's asked --</p> <p>12 answered every question you've asked about Think</p> <p>13 Finance. But we're not going to have a fishing</p> <p>14 expedition into Elevate. If you want to go to Judge</p> <p>15 Joiner, we'll do that. But we're not doing that.</p> <p>16 BY MR. ACKELSBURG:</p> <p>17 Q. Mr. Lutes, before you went to Elevate, you</p> <p>18 were still the CFO of Think Finance. One of your</p> <p>19 products was called RISE, was it not?</p> <p>20 A. When I was the CFO prior to the spinoff,</p> <p>21 yes, RISE would have -- we would have launched, I</p> <p>22 believe, sometime in 2013 the RISE install- -- state</p> <p>23 licensed --</p> <p>24 Q. And that was --</p> <p>25 A. -- installment loan --</p>

<p style="text-align: right;">Page 209</p> <p>1 Q. -- a state licensed product, was it not?</p> <p>2 A. Yes, it was.</p> <p>3 Q. Okay. And by definition, that was only</p> <p>4 offered in states where you could get a state</p> <p>5 license; am I right, the RISE product?</p> <p>6 MR. SCHEFF: Mr. Lutes, answer that</p> <p>7 question to the extent you can without disclosing</p> <p>8 attorney-client communications. And if you can't do</p> <p>9 that, just tell us, and then don't answer the</p> <p>10 question.</p> <p>11 A. Yeah, I -- I was not involved in the -- the</p> <p>12 process of what states we could legally obtain</p> <p>13 licenses. That's a legal question.</p> <p>14 BY MR. ACKELSBURG:</p> <p>15 Q. Okeydoke.</p> <p>16 (Exhibit No. 255 marked.)</p> <p>17 A. (Reviews document.)</p> <p>18 Okay.</p> <p>19 BY MR. ACKELSBURG:</p> <p>20 Q. So this e-mail chain is in November of</p> <p>21 2013, and this was a period of time where the</p> <p>22 company was having a hard time finding banks and</p> <p>23 payment processors to handle the ACH processing for</p> <p>24 the three products; am I right?</p> <p>25 MR. SCHEFF: Object to the form.</p>	<p style="text-align: right;">Page 211</p> <p>1 saw an article, apparently, about U.S. Bank being</p> <p>2 sued for processing allegedly illegal loans, and it</p> <p>3 looks like he forwards this -- actually, it starts</p> <p>4 off with you, I guess. Right? Let me see. You're</p> <p>5 forwarding this to Mr. Poisson in Montreal; am I</p> <p>6 right?</p> <p>7 A. Yes, it appears that I'm forwarding an</p> <p>8 article from the Minneapolis Star Tribune, along</p> <p>9 with a listing of states that the tribal -- the</p> <p>10 tribes we partnered with did not originate loans in.</p> <p>11 Q. That was called a "no-state list." That's</p> <p>12 a term you remember, right?</p> <p>13 A. Yes.</p> <p>14 Q. Okay. And, now, prior to 2013, there was</p> <p>15 no no-state list, was there?</p> <p>16 A. You know, I don't -- I don't recall. I</p> <p>17 don't believe that would be the case because I</p> <p>18 believe that the tribes always, at some point in</p> <p>19 time since they began originating, always chose not</p> <p>20 to originate in their home state. So I would assume</p> <p>21 that there would be a no-state list really from the</p> <p>22 start, technically speaking.</p> <p>23 Q. Well, at least as to the one state that</p> <p>24 they're situated in?</p> <p>25 A. Yeah.</p>
<p style="text-align: right;">Page 210</p> <p>1 A. During the -- the fall of 2013 would have</p> <p>2 been the height of Operation Choke Point where the</p> <p>3 government was putting, in my opinion, undue</p> <p>4 pressure on a lot of banks to not provide ACH</p> <p>5 services to -- to people in the greater than 36</p> <p>6 percent APR space, whether state licensed or tribal</p> <p>7 or any other format.</p> <p>8 BY MR. ACKELSBURG:</p> <p>9 Q. And this is an exchange you had with</p> <p>10 someone at Bank of Montreal in Canada; am I right?</p> <p>11 A. Correct.</p> <p>12 Q. All right. And there was a period of time</p> <p>13 where Bank of Montreal was handling the -- was the</p> <p>14 ODFI for the -- for the ACH processing; am I right?</p> <p>15 A. Technically, there was a point in time</p> <p>16 where Bank of Montreal's U.S. Bank subsidiary,</p> <p>17 Harris Bank --</p> <p>18 Q. Right.</p> <p>19 A. -- was the ODFI handling the ACH</p> <p>20 transaction.</p> <p>21 Q. Right. During the period of time that</p> <p>22 you're corresponding with this gentleman in -- it</p> <p>23 looks like in Montreal or somewhere?</p> <p>24 A. It's Montreal.</p> <p>25 Q. Yeah. Okay. And the context is that he</p>	<p style="text-align: right;">Page 212</p> <p>1 Q. And what's your understanding of why the</p> <p>2 tribes wouldn't want to lend -- wouldn't want to</p> <p>3 make 220 percent loans to their neighbors across the</p> <p>4 line of the reservation?</p> <p>5 MR. SHELTON: Object to form.</p> <p>6 MR. SCHEFF: Object to the form.</p> <p>7 A. I'll answer. While I didn't have a direct</p> <p>8 conversation with the tribes regarding that</p> <p>9 particular situation, my understanding was, is that,</p> <p>10 as you could expect, there's sensitivity. I mean,</p> <p>11 the tribes are originating loans. They have certain</p> <p>12 members of their tribe that are working for the</p> <p>13 Plain Green entity or the Otoe-Missouria Great</p> <p>14 Plains entity or the Mobiloans entity, and I think</p> <p>15 there was sensitivity to, you know, certain of their</p> <p>16 employees being aware that maybe some of their other</p> <p>17 tribal members might be applying for a high interest</p> <p>18 rate loan. And so I think just from a</p> <p>19 confidentiality standpoint, as you can appreciate</p> <p>20 tribes are almost like close-knit families, I think</p> <p>21 they just chose to -- didn't want to have any,</p> <p>22 quote, type of inner-family political issues, and so</p> <p>23 just chose that it was safer to -- from their</p> <p>24 perspective, to not, you know, have that happen.</p> <p>25 BY MR. ACKELSBURG:</p>

<p style="text-align: right;">Page 213</p> <p>1 Q. Okay. So I understand why Plain Green is</p> <p>2 not lending in Montana, why Great Plains isn't</p> <p>3 lending in Oklahoma and why Mobiloans are not</p> <p>4 lending in Louisiana. But I'm wondering why -- why</p> <p>5 all three of them have decided not to lend in the</p> <p>6 other 11 states listed in the e-mail. Do you know</p> <p>7 why?</p> <p>8 A. I -- I really don't know why. That was</p> <p>9 conversations between other members of Think Finance</p> <p>10 and the tribes as to why they chose those other 11</p> <p>11 states.</p> <p>12 Q. Well, my recollection of the -- in the</p> <p>13 previous exhibit we were looking at, there was</p> <p>14 reference to Patton Boggs and Claudia having</p> <p>15 something to do with that no-state list. Do you</p> <p>16 remember that?</p> <p>17 A. That was listed in that e-mail that you</p> <p>18 provided to me, but I did not have that conversation</p> <p>19 with Patton Boggs or Claudia.</p> <p>20 Q. Do you know who Claudia is?</p> <p>21 A. I'm assuming it's Claudia Callaway.</p> <p>22 Q. And what interaction have you had with</p> <p>23 Claudia Callaway?</p> <p>24 A. Very little interaction with Claudia</p> <p>25 Callaway.</p>	<p style="text-align: right;">Page 215</p> <p>1 Ms. Callaway in any way.</p> <p>2 Do you understand?</p> <p>3 THE WITNESS: Yes, I agree.</p> <p>4 MR. SHELDON: To the extent</p> <p>5 Mr. Ackelsberg has general questions about how</p> <p>6 frequently you communicated with Ms. Callaway or in</p> <p>7 what means, you may answer those, but in doing so,</p> <p>8 please be careful not to reveal the substance of any</p> <p>9 of your communications, electronic or oral, with</p> <p>10 Ms. Callaway. Do you understand?</p> <p>11 THE WITNESS: Yes.</p> <p>12 MR. SHELDON: Thank you.</p> <p>13 BY MR. ACKELSBURG:</p> <p>14 Q. How many times did you have conversations</p> <p>15 with Claudia Callaway?</p> <p>16 A. Directly, I would say zero. As being part</p> <p>17 of in a room with her, it would be -- well, I'll</p> <p>18 just say, I mean --</p> <p>19 Q. So much for that.</p> <p>20 A. In a room, I mean, you know -- you know,</p> <p>21 probably less than ten.</p> <p>22 Q. When you were in the room with Claudia, who</p> <p>23 else was there in the room? Was this at, like, a</p> <p>24 board of directors meeting --</p> <p>25 A. No.</p>
<p style="text-align: right;">Page 214</p> <p>1 Q. Well, the little that you've had, what did</p> <p>2 it involve?</p> <p>3 A. I remember her --</p> <p>4 MR. SHELDON: Let me just make an</p> <p>5 objection here. Claudia Callaway, counsel for</p> <p>6 Think, obviously, so --</p> <p>7 MR. ACKELSBURG: I don't know if</p> <p>8 that's -- is it counsel for Think or counsel for</p> <p>9 Victory Park? I don't -- I don't know.</p> <p>10 MR. SHELDON: I'm happy to step</p> <p>11 outside and we can -- we can confer on it. Let's go</p> <p>12 off the record for a second --</p> <p>13 MR. ACKELSBURG: Sure.</p> <p>14 MR. SHELDON: -- and let me find out</p> <p>15 what the witness is going to say.</p> <p>16 THE VIDEOGRAPHER: We are off the</p> <p>17 record at 2:30 p m.</p> <p>18 (Break taken, 2:30 p m. to 2:35 p m.)</p> <p>19 THE VIDEOGRAPHER: We are back on the</p> <p>20 record at 2:35 p m.</p> <p>21 MR. SHELDON: The individual</p> <p>22 previously being asked about, Claudia Callaway, was</p> <p>23 outside counsel for Think Finance. I'm going to</p> <p>24 instruct the witness not to answer any -- any</p> <p>25 questions that would reveal the communications with</p>	<p style="text-align: right;">Page 216</p> <p>1 Q. -- or an executive committee meeting?</p> <p>2 A. No, it would not have been in a board of</p> <p>3 directors-type of situation or an exec meeting. It</p> <p>4 would have been something related to discussing --</p> <p>5 MR. SCHEFF: Not the subject matter.</p> <p>6 Just who was in the room, people.</p> <p>7 A. Sarah Cutrona, our general counsel, would</p> <p>8 typically have been in the room.</p> <p>9 BY MR. ACKELSBURG:</p> <p>10 Q. And what about people from outside Think</p> <p>11 Finance?</p> <p>12 A. Can't recall.</p> <p>13 Q. Tom Welch?</p> <p>14 A. No.</p> <p>15 Q. Anyone else from Victory Park?</p> <p>16 A. Not that I'm aware of, no.</p> <p>17 MR. ACKELSBURG: Okay. We'll move on</p> <p>18 to another document, 256.</p> <p>19 (Exhibit No. 256 marked.)</p> <p>20 MR. SCHEFF: Irv, is this attached to</p> <p>21 an e-mail?</p> <p>22 MR. ACKELSBURG: No. It's --</p> <p>23 MR. SCHEFF: It actually is. I know</p> <p>24 that it is.</p> <p>25 MR. ACKELSBURG: I don't think it is.</p>

Christopher Lutes

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<p>1 MR. SCHEFF: It actually is. So --</p> <p>2 MR. ACKELSBURG: Well, if it is --</p> <p>3 MR. SCHEFF: It actually is because</p> <p>4 I've looked at this document in prep, and it is</p> <p>5 attached to an e-mail.</p> <p>6 MR. ACKELSBURG: Well, we'll get it</p> <p>7 up.</p> <p>8 MR. SCHEFF: Thank you.</p> <p>9 MR. ACKELSBURG: We'll put it on the</p> <p>10 screen. Hang on.</p> <p>11 MR. SCHEFF: Thank you. That's great.</p> <p>12 A. While you are doing that, I'm going to</p> <p>13 start reading the document.</p> <p>14 (Reviews document.)</p> <p>15 MR. ACKELSBURG: There's no e-mail.</p> <p>16 I'm looking at it, Richard. I mean, there's</p> <p>17 multiple copies of so many documents. This</p> <p>18 particular -- I'm looking at the production,</p> <p>19 Richard.</p> <p>20 MR. SCHEFF: Then you marked one --</p> <p>21 this definitely is connected to an e-mail and</p> <p>22 attached to an e-mail. I looked at it yesterday.</p> <p>23 MR. ACKELSBURG: Richard, come -- you</p> <p>24 can come look at --</p> <p>25 MR. SCHEFF: I don't need to. I'm</p>	<p>1 board of directors, that he, as you can appreciate,</p> <p>2 was pretty well connected within the African</p> <p>3 American business community and was aware of several</p> <p>4 African American minority-owned banks that might be</p> <p>5 interested in the fee revenue from ACH transactions.</p> <p>6 So he suggested, can you put together a</p> <p>7 form letter, outline kind of the -- you know, the</p> <p>8 company, because they wouldn't know anything about</p> <p>9 Think Finance or the -- the tribes, put together,</p> <p>10 you know, an overview of the products, the volumes,</p> <p>11 just so that he could -- either he could introduce</p> <p>12 me to some of these banks or he, himself, could</p> <p>13 forward on this form letter and attachment, you</p> <p>14 know, to the banks to see if they might be</p> <p>15 interested in processing ACH transactions.</p> <p>16 Q. And you did forward it to banks?</p> <p>17 A. I believe so. I know I certainly did, yes.</p> <p>18 Q. Okay.</p> <p>19 A. I can't recall which ones, but. . .</p> <p>20 MR. ACKELSBURG: Okay. Next document,</p> <p>21 257.</p> <p>22 (Exhibit No. 257 marked.)</p> <p>23 BY MR. ACKELSBURG:</p> <p>24 Q. Sorry for the small print.</p> <p>25 A. Again, I request just a quick minute to</p>
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<p>1 just telling you what I know.</p> <p>2 MR. ACKELSBURG: All right. Fine.</p> <p>3 All right.</p> <p>4 BY MR. ACKELSBURG:</p> <p>5 Q. My question -- my question to you,</p> <p>6 Mr. Lutes, is, is this a letter that looks familiar</p> <p>7 to you?</p> <p>8 A. Yes, I recall it.</p> <p>9 Q. Okay. Now, before, you were talking about</p> <p>10 problems with regard to ACH, you mentioned Operation</p> <p>11 Choke Point. Can you tell us something about</p> <p>12 this -- this appears to be a form letter that --</p> <p>13 were you sending this to banks at this point?</p> <p>14 A. Yes. As -- as I recall, this was, again,</p> <p>15 at the height of Operation Choke Point when the</p> <p>16 federal regulators, I guess, subsequently to all</p> <p>17 this, you know, clearly were proven to abuse their</p> <p>18 power in pressuring banks not to process ACH</p> <p>19 transactions for a variety of industries, including</p> <p>20 ours. And for us, it was affecting not just our</p> <p>21 tribal clients, it was also affecting us from our</p> <p>22 RISE installment loan where we were the direct</p> <p>23 lender as well.</p> <p>24 And so as I recall, that this letter -- I</p> <p>25 think it came at the request of Bob Johnson on our</p>	<p>1 refresh myself.</p> <p>2 Q. Of course. Of course.</p> <p>3 A. (Reviews document.)</p> <p>4 Okay.</p> <p>5 Q. So during this period of time where you</p> <p>6 were having difficulties locating or retaining ACH</p> <p>7 providers, this was an issue that was being</p> <p>8 discussed fairly regularly with VPC; am I right?</p> <p>9 MR. SCHEFF: Object to the form.</p> <p>10 A. I'm not sure that I would say that we were</p> <p>11 fairly frequently, or whatever term you used, but</p> <p>12 certainly I was keeping VPC aware of the potential</p> <p>13 impact of ACH providers because GPLS had an existing</p> <p>14 large participation interest in the tribal</p> <p>15 portfolios, and ACH is the primary mechanism for</p> <p>16 collecting the payments related to the</p> <p>17 participations that GPLS held.</p> <p>18 BY MR. ACKELSBURG:</p> <p>19 Q. And would I be correct in -- in saying that</p> <p>20 during this period of time in August of 2013,</p> <p>21 Victory Park was expressing to you serious concern</p> <p>22 about the problem of ACH?</p> <p>23 MR. SHAPIRO: Object to form.</p> <p>24 MR. SCHEFF: Object to the form.</p> <p>25 A. I would say, you know, based upon this</p>

55 (Pages 217 to 220)

1 article and some of the other things that we were
2 experiencing related to transitioning from one ACH
3 provider to another, you know, multiple times over
4 the 2012, 2013 time span, that, yes, as a -- the
5 lender to a special purpose vehicle that holds a
6 large portfolio of loans that require ACH debit
7 processing to process transactions, that I can
8 understand why they would be concerned.

9 MR. ACKELSBURG: On the same topic,
10 let's look at 258. We're looking at P-258 Bates
11 TF-PA 678633.

12 (Exhibit No. 258 marked.)

13 A. (Reviews document.)

14 Okay.

15 MR. SHAPIRO: Hang on just a second,
16 please.

17 Thank you. Go ahead.

18 BY MR. ACKELSBURG:

19 Q. So when you write back to Mr. Welch on
20 August 14, that you appreciate the concern of the
21 LP, I just want to clarify that you're -- the LP
22 refers to the investors in GPLS; am I right?

23 A. That is correct.

24 MR. SHAPIRO: Object; foundation.
25 Late objection. I'm sorry.

1 would be talking with [REDACTED]?

2 A. It was -- I think the reason why we would
3 have a call with [REDACTED] would be at the request
4 of VPC to [REDACTED] being, you know, probably a
5 large investor LP in the GPLS fund, probably wanted
6 to hear directly from Ken and I in regards to, you
7 know, the concerns over Operation Choke Point and
8 the ACH processing.

9 Q. And did you, in fact, have that
10 conversation?

11 A. I believe so, yes.

12 Q. And did they sound concerned about the ACH
13 problem?

14 MR. SHAPIRO: Object to form.

15 A. No, I think after the conversation they
16 were comfortable because, to my knowledge, they --
17 they left their money in GPLS and didn't withdraw
18 it. I'm not sure if they had the right to withdraw
19 it, but, you know, they seemed fine after the
20 conversation with us. I mean, we all had some level
21 of concern, but. . .

22 BY MR. ACKELSBURG:

23 Q. These conversations that -- I mean, let's
24 step back for a minute. So you're writing -- you're
25 writing to banks. There's -- there's references to

1 BY MR. ACKELSBURG:

2 Q. And then Mr. Rees, who apparently was -- it
3 looks like he shared this -- this chain -- this
4 exchange you have with Mr. Welch that you exchange
5 with Mr. Rees, and you say, "For your information,
6 prep questions for the call with [REDACTED] tomorrow
7 morning at 7 a.m." Do you see that?

8 A. Yes, I do.

9 Q. Now, [REDACTED] refers to one of the major
10 investors in GPLS, right?

11 MR. SCHEFF: Object to the form.

12 A. As to whether they were the largest or
13 whatnot, they were a material investor in GPLS.

14 BY MR. ACKELSBURG:

15 Q. Was there -- discounting the -- aside from
16 the investment of Think Finance itself, was there
17 any investor that had a bigger stake in GPLS than
18 [REDACTED]?

19 MR. SHAPIRO: Object to form.

20 MR. SCHEFF: Object to the form.

21 BY MR. ACKELSBURG:

22 Q. If you know.

23 A. I'm not aware. I didn't have the detail of
24 all of their LPs.

25 Q. Okay. So do you know why you and Ken Rees

1 lots of conversations with lots of banks about
2 trying to -- trying to find somebody to process the
3 payments, right? I mean, this was -- this was a
4 big -- this was a big part of what you and Ken were
5 focused on at this point in time in the -- in the
6 company; am I right?

7 MR. SCHEFF: Object to the form.

8 MR. SHELDON: Object to form.

9 A. I'll go ahead and answer the question. I
10 wouldn't necessarily characterize it as Ken being
11 heavily involved, but certainly myself, as the CFO
12 and responsible for the treasury function and
13 finance function, was actively involved. It was
14 probably my number one priority at that particular
15 time was, you know, continuing to talk with ACH
16 processors, potential ODFIs.

17 BY MR. ACKELSBURG:

18 Q. And I realize that maybe Ken wasn't doing
19 the actual outreach to the banks, but you were
20 having -- you were frequently talking to Ken about
21 the problem? It was --

22 A. Yes, I was giving him frequent updates.

23 Q. Okay. It was a source of concern for both
24 of you, right?

25 MR. SCHEFF: Object to the form.

1 A. It was a concern from the standpoint that
2 to the extent that -- twofold: One, you need ODFIs
3 to process ACH credits so that the tribes can
4 originate loans. And then, also, you need ODFIs and
5 banks and ACH processors to process the collections.
6 And so from both perspectives, yes, there was a
7 concern.

8 BY MR. ACKELSBURG:

9 Q. I've noticed a lot of -- that there's a lot
10 of documents that -- in the production with -- with
11 regard to outreach to banks. In fact, there were --
12 there were board members, I think you said, that
13 were involved, Mr. Johnson. Alonzo Primus was
14 actually involved in looking for banks. Am I right?

15 A. Yes. Yes, as I recollect, he was.

16 Q. How did he reappear on the scene?

17 A. That's a good question. I'm not sure. I
18 did not contact him directly. He might have reached
19 out. As I recall -- and I may be wrong in this, but
20 as I recall, I think he had somehow hooked up with
21 Steven Haynes in regards to knowing. And it was
22 probably through Steven and Alonzo's experience, you
23 know, being in this space and operating First Bank
24 of Delaware, I think they had mutual connections
25 into certain ACH processors, whatnot. So. . .

1 Q. So one thing I haven't noticed in the
2 production is any involvement of any tribal members
3 in any of these conversations with regard to ACH
4 providing -- providers. Do you recall the tribes
5 ever being involved in any of this -- in this
6 search?

7 A. Yes, I do. I mean, one, besides just
8 frequently updating him on the status, all three
9 tribes were involved to some extent, based upon my
10 recollection. Some where I had direct
11 conversations, probably not e-mail but direct
12 conversations, and some that I just was aware of
13 tangentially.

14 For instance, I know the Plain Green
15 Chippewa Cree tribe, at one point, they had hired
16 their exbanker from Wells Fargo, Tim -- I forget
17 what his last name is -- McInerney, or something
18 like that. He was certainly, you know, being an
19 exbanker, actively involved trying to understand are
20 there locals banks in the Montana region that might
21 be able to process the ACH transactions for the
22 Chippewa Cree Plain Green operation.

23 I know that the Otoe-Missouria, along with
24 Mark Curry, were actively looking for ACH
25 processors, especially since they had their

1 secondary, you know, other lending program besides
2 us.

3 And I know that the Tunica-Biloxi tribe,
4 along with Mobiloans, in particular Marshall Perot,
5 I believe is how you pronounce his last name, or
6 Perot, who was on the Mobiloans lending board and
7 was actively involved in Washington and was an
8 African American as well, was actively reaching out
9 to potential minority-owned banks as well.

10 So all three were actively involved. All
11 three understood the importance because they needed,
12 you know, ACH processors and banks to process the
13 loans that they were originating and to process the
14 collections for the portfolio that was already
15 outstanding. So it was a combined effort.

16 Q. Okay. Thank you.

17 MR. ACKELSBURG: Let's look at 259.
18 (Exhibit No. 259 marked.)

19 A. (Reviews document.)

20 Okay.

21 BY MR. ACKELSBURG:

22 Q. So you see this is in the same period,
23 August of 2013, right?

24 A. Yeah.

25 Q. Okay.

1 A. It's a little bit later, I believe, than
2 some of the other e-mails.

3 Q. Right. So still in the ACH crisis?

4 A. I would characterize it as it was getting
5 close to the height of Operation Choke Point, yes.

6 Q. And we haven't mentioned this, but there
7 was another issue going on, as I recall. During
8 this period of time, there was -- there was a
9 lawsuit filed by the New York state banking
10 regulator challenging the legality of the program;
11 am I right?

12 A. I don't know if I would characterize it
13 that way. I thought that the attorney general in
14 New York had issued, like, a broad blanketed
15 statement asking banks not to process ACH
16 transactions for these certain industries.

17 Q. You don't remember a cease and desist from
18 the New York banking regulator?

19 A. No. Like I said, I mean, maybe that was
20 what I meant by a broad blanketed statement, but I
21 don't remember the specific lawsuit by the AG.

22 Q. Okay. So August 19, 2013, you're writing
23 to Tom Welch and Richard Levy with a cc to Ken. Do
24 you see that?

25 A. Yes.

<p style="text-align: right;">Page 229</p> <p>1 Q. Saying that you talked with Ken, "And I 2 will run two updated forecasts for us to discuss. 3 No. 1, we stop all new tribal customer acquisition 4 through the end of the year but still fund tribal 5 formers. No. 2, we stop all loan fundings through 6 the end of the year for tribal, new and formers. 7 We'll see what type of cash balances that drives." 8 Am I right that the context for this 9 e-mail is that Victory Park had already told you 10 that they were thinking of pulling the plug on GPLS? 11 MR. SCHEFF: Object to the form. 12 A. I'll answer the question. But, no, 13 that's -- that's not how I would characterize it. 14 Really, it's what Tom, I believe, references at the 15 top part of the e-mail chain. The real ask here is 16 to see how quickly we can get to 136 million of cash 17 in GPLS, which is 50 percent. So I'm assuming that 18 GPLS probably had, roughly, 272 million of 19 funding into -- or VPC had 272 million of funding 20 into GPLS. 21 And so what they were asking us from a 22 forecasting standpoint was, well, how quickly 23 could -- if you -- if the tribes and us minimize the 24 amount of marketing to new customers, how quickly 25 would the cash buildup to get to the 50 percent be,</p>	<p style="text-align: right;">Page 231</p> <p>1 participations that they had purchased from the 2 three tribes, and they were concerned through 3 Operation Choke Point that the government was 4 putting undue pressure on banks and ACH processors 5 not to process collections. And so what they wanted 6 to do was to minimize the amount of loan balance in 7 GPLS and increase the amount of cash reserve to help 8 minimize their potential exposure. 9 BY MR. ACKELSBURG: 10 Q. All right. So let's look at the -- an 11 e-mail from the day after on August 20th. 12 MR. ACKELSBURG: This is 260, TF-PA 13 677073. 14 (Exhibit No. 260 marked.) 15 BY MR. ACKELSBURG: 16 Q. As in all e-mails, start from the back. 17 A. Yeah. Give me a quick minute again. 18 (Reviews document.) 19 Okay. 20 Q. So on August 20th, Mr. Welch is telling you 21 and Ken together, giving you a heads up that they're 22 going to put a halt to all lending, right? 23 MR. SHAPIRO: Object to form. That's 24 not what this says. 25 BY MR. ACKELSBURG:</p>
<p style="text-align: right;">Page 230</p> <p>1 or would it need to be even more drastic, meaning 2 that the tribes would have to stop originating new 3 loans to both new and former customers, you know, 4 how quickly would it get -- because I -- that, to 5 me, was the characterization of the -- of why they 6 asked me to run the forecast and what -- not that 7 they were pulling the plug, but they wanted to 8 create a -- kind of a cash reserve on what they had 9 invested into the GPLS fund. 10 BY MR. ACKELSBURG: 11 Q. A cash reserve to enable them to exit the 12 program, right? 13 MR. SHAPIRO: Object to form. 14 MR. SCHEFF: Object to the form. 15 BY MR. ACKELSBURG: 16 Q. If necessary. If necessary. 17 MR. SCHEFF: Object to the form. 18 A. No, I would view it as like any other 19 lending situation, if you were lending in real 20 estate and you felt that loan -- that real estate 21 values were going to go down, you may request the 22 owner of the real estate to put in more cash. I 23 think what their -- their concern was definitely 24 related to Operation Choke Point in the fact that 25 they had this large existing portfolio of</p>	<p style="text-align: right;">Page 232</p> <p>1 Q. That's what happened on August 20th, right? 2 MR. SHAPIRO: Same objection. You're 3 misleading the witness. 4 A. Yeah, the -- it's not lending. I mean, 5 what it says was as I've stated before, GPLS had the 6 right to halt buying participation interests -- 7 BY MR. ACKELSBURG: 8 Q. Well, I -- 9 A. -- from the loans originated by tribes. 10 MR. SHAPIRO: Let him finish. 11 BY MR. ACKELSBURG: 12 Q. I appreciate the distinction, but if GPLS 13 doesn't buy, the tribes don't make the loans, right? 14 MR. SCHEFF: Object to the form. 15 A. No, I wouldn't necessarily agree with that. 16 There's the possibility that the tribes could 17 originate and hold onto the loans themselves if they 18 had the capital or if the tribes had the ability to 19 go out to other third-party lenders besides VPC and 20 create separate SPVs. This was just related to the 21 GPLS. 22 So to say that the tribes couldn't 23 originate -- now, on a short-term basis, that's 24 probably a potential outcome. But long-term, that 25 doesn't necessarily mean that the tribes couldn't</p>

<p style="text-align: right;">Page 233</p> <p>1 originate just because VPC decided to stop. 2 BY MR. ACKELSBURG: 3 Q. No, yeah, and I appreciate the distinction. 4 I'm not asking for what the tribes theoretically had 5 the right to do, perhaps the ability to do with some 6 other funding source. But from the -- I think you 7 answered the question. From the standpoint of the 8 system as it was currently set up, not from what -- 9 how it might be set up in the future, if -- if GPLS 10 is telling Think Finance no more originations -- 11 MR. SHAPIRO: Objection. You're 12 misstating the testimony and the document. 13 MR. ACKELSBURG: I'll restate -- I'll 14 restate the question. The last thing I want to do 15 is misstate it. 16 MR. SHAPIRO: Well, just look at the 17 language of the document you showed him. I mean, 18 that's probably the easiest way to do it. 19 BY MR. ACKELSBURG: 20 Q. So at August -- in August 20th, Victory 21 Park is providing you notice that they're going to 22 put a halt to all participation interests, right? 23 A. They're saying -- 24 MR. SHAPIRO: Object to form. 25 BY MR. ACKELSBURG:</p>	<p style="text-align: right;">Page 235</p> <p>1 itself, and if anybody reads it -- just read it into 2 the record. It says what it says. We don't all 3 need to sit here and sort of divine what Tom Welch 4 was saying. He said it. 5 MR. ACKELSBURG: I agree with you. I 6 agree with you. 7 BY MR. ACKELSBURG: 8 Q. Now, there's one other aspect of the -- I'm 9 trying to avoid some unnecessary embarrassment. So 10 there is other -- there are other e-mails where 11 you're letting people in the -- in the -- see if 12 this refreshes your recollection. You're advising 13 Jason that -- as to what you heard from Tom Welch, 14 and Jason tells you, "But we just dropped a big 15 direct mail from Mobiloans." Do you remember that? 16 A. I think it's -- what I see in this -- this 17 document that you provided to me, and I think I 18 summarize that in my response to Tom is -- 19 Q. Right. 20 A. -- that one issue we should discuss is 21 we're in the middle of two existing preapproved 22 direct mail campaigns. 23 Q. Right. Okay. I'm trying to provide some 24 context for your response. So you -- after you get 25 the information from your people, from Jason,</p>
<p style="text-align: right;">Page 234</p> <p>1 Q. Participation purchases. 2 MR. SHAPIRO: Objection; form. You're 3 misquoting the document. 4 A. I think I can answer your question, but I 5 will rephrase the question that I think Dan would 6 find acceptable. On August 20th, what Tom was 7 saying was we're going to send over a formal letter 8 to you, Think Finance, to let you know that it is 9 our intent to have GPLS halt the purchase of 10 participations from the three tribes. Could you 11 please -- and I know it's not worded here -- also 12 forward that on to the tribes to let them know that 13 we're exercising this right under our master 14 participation agreement? 15 BY MR. ACKELSBURG: 16 Q. Okay. And -- 17 MR. SHELTON: Lets give Dan a chance 18 to object to the question formed by the witness, 19 too. 20 MR. SCHEFF: And the answer. 21 MR. SHELTON: And the answer. 22 MR. SHAPIRO: Well, so as long as you 23 have been kind enough, the -- I would just say that 24 the document that everybody is referring to, the 25 August 20, 2013, e-mail from Tom Welch, speaks for</p>	<p style="text-align: right;">Page 236</p> <p>1 whoever, you then communicate back to Tom: We have 2 a problem, we've already done a mail drop, direct 3 mail on Mobiloans. This potentially -- I mean, 4 you're basically -- a direct mail drop is 5 effectively offering a loan to people in some -- 6 right? 7 MR. SCHEFF: Object to the form. 8 BY MR. ACKELSBURG: 9 Q. It's -- these are often preapproved loans, 10 right? 11 MR. SCHEFF: Object to the form. 12 A. I'll answer it exactly as I outlined in the 13 e-mail, you know, one issue we discussed is we're in 14 the middle of two existing preapproved -- 15 preapproved direct mail campaigns. 16 BY MR. ACKELSBURG: 17 Q. Okay. And so then you get -- and then -- 18 and then Tom is responding to that, that they might 19 soften their restriction at least as to -- as to the 20 preapprovals that have already gone out, they 21 mail -- let that -- let that go, right? 22 A. From my perspective, in reviewing this 23 e-mail chain, yes, what I recollect is that they 24 softened their stance and didn't provide an 25 immediate hard stop on purchasing the</p>

<p style="text-align: right;">Page 237</p> <p>1 participations. They understood that, legally, the</p> <p>2 lenders are, you know, required to honor any</p> <p>3 customer that -- that, you know, submits an</p> <p>4 application for a loan that, in essence, they were</p> <p>5 preapproved for and, you know, were rightfully to be</p> <p>6 funded.</p> <p>7 Q. Okay. And then on that same day, you,</p> <p>8 again, communicate with Tom Welch -- and I want you</p> <p>9 to explain what you mean by, "We will shut</p> <p>10 everything down by the end of this week."</p> <p>11 A. When I use that characterization, it is</p> <p>12 based on, you know, other communications between</p> <p>13 Jason Harvison, Michelle Nguyen, you know, to the</p> <p>14 three tribes letting them know what based on what</p> <p>15 this e-mail chain alluded to, that it appeared that</p> <p>16 GPLS was going to stop purchasing participations,</p> <p>17 and that outside of the existing preapproved direct</p> <p>18 mail campaigns that were already outstanding, that</p> <p>19 we collectively, the Think Finance along with the</p> <p>20 three tribes in terms of marketing the program and</p> <p>21 originating the loans related to GPLS, GPLS would</p> <p>22 not purchase the loans.</p> <p>23 Q. All right. Now, I am going to give you an</p> <p>24 e-mail from two months -- or close to two months</p> <p>25 later in October.</p>	<p style="text-align: right;">Page 239</p> <p>1 know, some of the new small IT changes or product</p> <p>2 changes. So that would be my guess. But I can't</p> <p>3 recall specifically what the volume was.</p> <p>4 Q. All right. We'll do one more, and then</p> <p>5 we'll take a break. All right?</p> <p>6 A. Okay. Thank you.</p> <p>7 MR. ACKELSBURG: 262. This is GPLP</p> <p>8 5108002.</p> <p>9 (Exhibit No. 262 marked.)</p> <p>10 A. (Reviews document.)</p> <p>11 Okay.</p> <p>12 MR. SHAPIRO: Hang on. I'm sorry.</p> <p>13 Okay. Thank you.</p> <p>14 BY MR. ACKELSBURG:</p> <p>15 Q. So this is, roughly, the same period of</p> <p>16 time, a few days earlier. Why don't you explain</p> <p>17 what's going on here. What's -- you're asking for a</p> <p>18 letter to the tribes from GPLS, right?</p> <p>19 A. Yes.</p> <p>20 Q. Now, before I -- before you -- I ask my</p> <p>21 next question about that, let me just in terms of</p> <p>22 understanding the protocol, did the tribes have</p> <p>23 direct day-to-day communication with VPC?</p> <p>24 A. No, they didn't.</p> <p>25 MR. SHAPIRO: Objection; form.</p>
<p style="text-align: right;">Page 238</p> <p>1 MR. ACKELSBURG: This is 261.</p> <p>2 MR. SCHEFF: Are you all right? Need</p> <p>3 a break? Are you good?</p> <p>4 THE WITNESS: No, I'm good for a few</p> <p>5 more minutes. Once we wrap up this line of</p> <p>6 questioning, if I could take a quick break --</p> <p>7 MR. ACKELSBURG: Oh, sure.</p> <p>8 THE WITNESS: -- just to refresh.</p> <p>9 MR. ACKELSBURG: This is Bates No.</p> <p>10 TF-PA 309723, Exhibit 261.</p> <p>11 (Exhibit No. 261 marked.)</p> <p>12 A. (Reviews document.)</p> <p>13 Okay.</p> <p>14 BY MR. ACKELSBURG:</p> <p>15 Q. So we're now two months later. It's now</p> <p>16 October of 2013. Tell us, based on this e-mail, the</p> <p>17 status of new loan originations across the three</p> <p>18 projects -- the three products.</p> <p>19 A. Goodness, I actually don't recollect</p> <p>20 exactly where we would have been on that. It seems</p> <p>21 based on this e-mail chain that -- and I'm just</p> <p>22 guessing -- that the new origination volume would</p> <p>23 have been pretty minimal. It appears that the</p> <p>24 tribes and us were asking GPLS to allow a small</p> <p>25 amount of new originations just to test or -- you</p>	<p style="text-align: right;">Page 240</p> <p>1 BY MR. ACKELSBURG:</p> <p>2 Q. And those communications would be through</p> <p>3 you, right?</p> <p>4 MR. SCHEFF: "You" being Think Finance</p> <p>5 or "you" being Chris Lutes?</p> <p>6 MR. ACKELSBURG: Either one.</p> <p>7 A. Me being the CFO of Think Finance, I would</p> <p>8 assume that a majority of the communications between</p> <p>9 VPC GPLS related to this relationship came to me</p> <p>10 directly. I wouldn't necessarily be aware if VPC</p> <p>11 reached out to any of the three tribes directly.</p> <p>12 BY MR. ACKELSBURG:</p> <p>13 Q. All right. So what was explained to the</p> <p>14 tribes with regard -- up until this point -- so it's</p> <p>15 now, roughly, close to two months where at least as</p> <p>16 to new customers, the -- the system has been shut</p> <p>17 down, right?</p> <p>18 A. My knowledge may be incorrect, but my</p> <p>19 understanding at this point in time was at one point</p> <p>20 GPLS provided a formal notification to us and all</p> <p>21 three tribes that they were not purchasing any more</p> <p>22 participations. I think that softened a little bit,</p> <p>23 as the last e-mail chain alluded to, and I think</p> <p>24 what I was asking for was documentation to support</p> <p>25 that they were now comfortable allowing a small</p>

<p style="text-align: right;">Page 241</p> <p>1 amount of former repeat customers and the new</p> <p>2 customers that were referenced in the prior e-mail</p> <p>3 chain to be originated by the three tribes, that</p> <p>4 they would buy, you know, those -- those -- that</p> <p>5 minimal amount of participation as being originated.</p> <p>6 Q. Do you remember any formal communications</p> <p>7 going from Think Finance to the tribes explaining</p> <p>8 the reasons for the -- either the stoppage or the</p> <p>9 slowdown in new originations?</p> <p>10 A. From my perspective, there certainly would</p> <p>11 have been -- and it probably would have been between</p> <p>12 Jason Harvison and the tribes or Michelle Nguyen and</p> <p>13 the tribes, since they had the direct kind of</p> <p>14 product relationships with all three tribes.</p> <p>15 But I would have communicated to them --</p> <p>16 and, clearly, the tribes were aware. I mean,</p> <p>17 Operation Choke Point is at a height. I mean, it's</p> <p>18 somewhat understandable that GPLS would have</p> <p>19 concerns buying a large amount of loan</p> <p>20 participations, again, with concerns that if the</p> <p>21 government, is, in my opinion, you know, exercising</p> <p>22 undue influence and pressure on banks and ACH</p> <p>23 processors not to process transactions, you can</p> <p>24 understand why GPLS would be nervous.</p> <p>25 As I would recollect, you know, that would</p>	<p style="text-align: right;">Page 243</p> <p>1 expense based on volume, and I just wanted to alert</p> <p>2 them that, you know, GPLS not purchasing</p> <p>3 participations and the tribes having to eliminate</p> <p>4 their originations would certainly impact ACH</p> <p>5 volumes.</p> <p>6 MR. ACKELSBURG: Okay. You can take a</p> <p>7 break.</p> <p>8 THE VIDEOGRAPHER: We are off the</p> <p>9 record at 3:12 p m.</p> <p>10 (Exhibit No. 263 A&B marked.)</p> <p>11 (Break taken, 3:12 p m. to 3:25 p m.)</p> <p>12 THE VIDEOGRAPHER: We are back on the</p> <p>13 record at 3:25 p m.</p> <p>14 BY MR. ACKELSBURG:</p> <p>15 Q. So we're looking at Exhibit 263A and B, A</p> <p>16 being the cover e-mail and B the attachment. Am I</p> <p>17 right that during this time period where a wind down</p> <p>18 of GPLS is being discussed, am I right that there is</p> <p>19 at least an ask by Think Finance of Victory Park to</p> <p>20 shift some of the funding to the RISE product? Is</p> <p>21 that -- is that correct?</p> <p>22 A. No, I wouldn't view it that way. I really</p> <p>23 view it two separate things are going on during this</p> <p>24 time span. One is I wouldn't necessarily call it a</p> <p>25 wind down of GPLS. I would call it kind of a</p>
<p style="text-align: right;">Page 242</p> <p>1 require a formal letter, as this e-mail, you know,</p> <p>2 would allude to, in terms of GPLS per the master</p> <p>3 participation agreement saying that it is no longer</p> <p>4 interested or at least minimizing, and, you know, we</p> <p>5 would pass on that formal communication directly to</p> <p>6 the tribes. And if it wasn't formally passed on, it</p> <p>7 certainly was verbally passed on in the form of</p> <p>8 communication from Michelle or Jason to the tribes.</p> <p>9 Q. Did Michelle or Jason or anybody else</p> <p>10 associated with the tribal products ask you to get</p> <p>11 some kind of a letter from GPLS, or you just thought</p> <p>12 it would be a good idea to ask them on your own?</p> <p>13 A. The way I would phrase that question is,</p> <p>14 one, I mean, just my awareness of the agreement, I</p> <p>15 mean, I felt that, you know, per the master</p> <p>16 participation agreement, I'm sure -- I would have to</p> <p>17 go back and look at the specific clause, but I'm</p> <p>18 sure GPLS was required to give notice to all three</p> <p>19 tribes that they were halting or minimizing the</p> <p>20 amount of participations purchased.</p> <p>21 And then as the top of this e-mail chain</p> <p>22 also alludes to, for us directly, I think I needed</p> <p>23 something to provide to KapCharge as the ACH</p> <p>24 processor, because I think our agreement with them,</p> <p>25 we were getting charged a certain amount of ACH</p>	<p style="text-align: right;">Page 244</p> <p>1 downsizing or, you know, VPC GPLS's request to have</p> <p>2 more cash, less loans. And -- but I think at the</p> <p>3 same time what this e-mail chain refers to is, is</p> <p>4 that [REDACTED], [REDACTED] is interested in keeping their</p> <p>5 50 million in the GPLS fund.</p> <p>6 Separate, what this 263B refers to, it's a</p> <p>7 term sheet. Separate at this time, in the middle of</p> <p>8 2013, we -- we decided to launch our RISE</p> <p>9 installment state-based state-licensed lending</p> <p>10 product, and it was starting to grow pretty rapidly.</p> <p>11 And so we were not going to be able to finance it</p> <p>12 out of our own existing cash flow, and so -- it's</p> <p>13 kind of a separate transaction, so I would not say</p> <p>14 that we were shifting funds from GPLS. It's a whole</p> <p>15 separate product. It could have different LPs. If</p> <p>16 VPC didn't want to provide funding for it, we could</p> <p>17 go out and find funding from somebody else.</p> <p>18 Q. Okay. And that's the subject of the -- of</p> <p>19 the e-mail, that topic?</p> <p>20 A. Well, the subject of the e-mail -- good</p> <p>21 question. What this gets into is that because GPLS</p> <p>22 is, for lack for a better term, downsizing and there</p> <p>23 aren't a lot of new loan originations -- or loan</p> <p>24 originations from the three tribes happening from an</p> <p>25 origination standpoint, I am going to assume that</p>

<p style="text-align: right;">Page 245</p> <p>1 the credit default swap, for a short period of time, 2 is becoming pretty profitable. Because you've got 3 an existing portfolio that's generating nice APRs, 4 but there's not a lot of marketing expense that 5 we're incurring at Think Finance, and there is -- 6 the loan losses are probably improving a little bit 7 because new customers typically have a higher risk 8 of loss than existing customers. So if you don't 9 have a lot new customer loan origination, credit 10 quality improves.</p> <p>11 So we're getting credit -- you know, we're 12 getting cash flow as a part of our credit default 13 swap with GPLS, and at the same time, I'm 14 communicating to GPLS, you know, it's nice that, you 15 know, you want 50 percent cash reserve, you know, in 16 the GPLS with your investment, but, you know, at the 17 same time, I'm not thrilled about, you know, as part 18 of the credit default swap arrangement that you're 19 getting -- I don't know if it was 17, 18 -- 20 somewhere between a 17 to 20 percent return on what 21 I affectionally joked in a verbal discussion with 22 Tom Welch was a money market mutual fund, you know, 23 that -- you know, and so we're going to start to 24 look to prepay down some of the GPLS facility 25 because it makes no sense for our credit default</p>	<p style="text-align: right;">Page 247</p> <p>1 and the ILP product that the company was marketing 2 for itself under the RISE label?</p> <p>3 MR. SCHEFF: Object to the form. From 4 a CFO perspective?</p> <p>5 MR. ACKELSBERG: Well, I mean. . .</p> <p>6 MR. SCHEFF: Answer the question if 7 you can.</p> <p>8 A. I'm just going to answer it from my 9 perspective. Without getting into the -- the unit 10 economics are certainly different between the two, 11 to a certain extent. I think RISE, from our 12 perspective, was a product where as the state 13 licensed direct lender, we could offer some other, 14 you know, unique features that Ken Rees, Jason 15 Harvison, Michelle Nguyen and others felt was 16 important.</p> <p>17 You know -- well, one, first and foremost, 18 it's just -- especially, as you can appreciate in 19 this type of environment, regulatory diversity. 20 Being a direct state licensed lender definitely, I 21 think, had -- was one way of operating. And then 22 you also had, you know, the service provider model. 23 So it was two different ways of distributing the 24 same. So, I mean, from that perspective, from the 25 CSO -- CFO perspective, it gave us multiple</p>
<p style="text-align: right;">Page 246</p> <p>1 swap to be incurring a 17 to 20 percent, you know, 2 cost of funds associated with it.</p> <p>3 So then what we get into is with this -- I 4 mean -- but Tom, what he's alluding to in this 5 e-mail, we would like to protect [REDACTED] investment, 6 you know, don't pay down GPLS so much that we have 7 to return [REDACTED] money to them and GPLS.</p> <p>8 And I said, well, that's fine. What we'll 9 then end up doing is we won't pay down GPLS as much, 10 but from a corporate CFO perspective, I said what 11 that means is, I'll probably -- I want to finalize 12 this RISE facility, but I probably won't be 13 borrowing as much initially because I'll use my 14 excess cash flow. Rather than paying down GPLS, 15 I'll use it to self-fund our RISE growth for a 16 little bit.</p> <p>17 So that's kind of how it all ties to -- 18 kind of together as to why we were mentioning both 19 in the same e-mail even though they're two distinct 20 facilities.</p> <p>21 Q. In your mind, other than the fact that 22 one's state licensed and one is not, what's -- from 23 a -- from the standpoint of the CFO, what was the 24 difference between the ILP product that was being 25 marketed for Plain Green, for example, and the --</p>	<p style="text-align: right;">Page 248</p> <p>1 abilities to lend in a similar type of -- not us 2 lend but gave us the ability with RISE to lend 3 directly with the tribal programs, as we talked. It 4 gave them -- you know, us the ability to participate 5 as a service provider to them lending -- lending 6 their products.</p> <p>7 But there were different features. You 8 know, RISE offered price -- price progression, you 9 know, down to 36 percent, other, you know, other 10 bells and whistles. But -- so there were -- there 11 were definitely differences between the two 12 products.</p> <p>13 BY MR. ACKELSBERG:</p> <p>14 Q. Well, you don't have to pay a revenue share 15 for RISE, right?</p> <p>16 A. Yeah, I would argue, I mean, from a CFO 17 perspective it would probably be more profitable. 18 But, really, all of the products that we were 19 involved with, whether we were the direct lender or 20 the service provider, what we were trying to target 21 was, roughly, you know, a 20 percent operating 22 margin, you know, across all of the products.</p> <p>23 In fact, you know, when you look at, you 24 know, these relationships, you know, from a tribal 25 lending perspective -- you know, I went back and</p>

1 looked at the audited financials from 2011 through
2 2013 when I was the CFO in advance of this
3 deposition, just to kind of refresh myself on the
4 economics because I figured it would come up at some
5 point. But, you know, Think Finance had roughly 60
6 million of net income from 2011 through 2013.

7 Looking at the audited financials, I could
8 look at the interest expense line item and see that
9 the interest expense, that we had to characterize
10 the VPC guaranteed return on the GPLS facility and
11 maybe a small amount of debt related to RISE was
12 roughly 92 million during that three-year period,
13 and the tribes, from what I could gather in looking
14 at the other cost of sales and the profit share paid
15 to them was roughly 60 million.

16 So it was about a 30 percent split to us,
17 30 percent to the tribes, and 40 percent to VPC. So
18 it seemed reasonable that all three, as I kind of
19 thought, were making relatively about the -- the
20 same amount of money, or it wasn't completely
21 disproportionate.

22 So I would say, you know, back to your
23 regarding, you know, would it be more profitable for
24 us to do it directly ourselves, yeah, but we -- you
25 know, with the price progression and some other

1 things, we kind of generally always targeted
2 20 percent operating margin on the revenue for any
3 of the products or -- or being a service provider
4 that we would offer.

5 Q. Well, I'll go -- so what was that, 30
6 percent -- 30 percent Think, 30 percent tribe and
7 40 percent VPC, that's your sense of how the
8 money --

9 A. That's my sense in looking from 2011 to
10 2013. Even though I stayed to the end of 2014, I
11 wasn't around in early 2015 when the audit for 2014
12 got done.

13 Q. All right. Well, I'll ask you more about
14 that before we go, but I want to -- I want to sort
15 of stick with, like, what's going on in this end of
16 2013 period.

17 MR. ACKELSBURG: This will be 264.
18 (Exhibit No. 264 marked.)

19 MR. SHELDON: Whoever stapled this is
20 testing my page flipping ability skills.

21 MR. ACKELSBURG: Sometimes it's the
22 machine. This one looks like the machine.

23 A. (Reviews document.)

24 Okay.

25 MR. SHELDON: I'll need another

1 minute. He's faster than me.

2 MR. SHAPIRO: Well, by the time the
3 documents get down here, it's --

4 MR. ACKELSBURG: Yeah, yeah, yeah,
5 you're at an unfair advantage down there.

6 MR. SHAPIRO: A little.

7 MR. HERMAN: I hear you blaming me.

8 MR. ACKELSBURG: I'll throw them down
9 that end first and it will work its way down.

10 THE WITNESS: Trust me, if it was
11 numbers, I would look a lot more closely. I'm just
12 trained that way.

13 MR. SHAPIRO: Okay. Thank you.

14 MR. SHELDON: Thank you.

15 BY MR. ACKELSBURG:

16 Q. So this begins with an e-mail from Linda
17 Rogenski to -- well, what's called, "To:
18 Reporting," and this has to do with the monthly
19 reporting protocol, right, that Linda was in charge
20 of, or that -- that finance was in charge of,
21 somebody in finance was in --

22 A. Somebody in Think Finance, yeah, we would
23 report the results monthly to Victory Park Capital.

24 Q. And I think Linda did -- L2 did --

25 A. Oh, that's very good.

1 Q. Thank you.

2 Did -- tell us a little bit about this
3 monthly report that would be sent to VPC every
4 month. So it would include the board of directors
5 package, right?

6 A. Yes.

7 Q. And it would also include this large --
8 very large spreadsheet, the --

9 A. Excel file with multiple spreadsheets in
10 it, yes.

11 Q. Yeah. And it sounds like Tom Welch is
12 communicating back that there's some -- something
13 came up at the meeting that -- that he hadn't heard
14 about before.

15 A. Well, as part of -- I'll take that. I
16 understand the gist of your question. In the board
17 dec, I think he's referring in the back of this
18 e-mail that there was a section that we redacted,
19 cut out in terms of the board pack related to
20 Project Exclaim. And so then what I was telling him
21 is that we didn't want him to see that just yet.
22 Ken and I had scheduled a call, I believe, with him
23 and Richard Levy for early that following week to
24 discuss that Project Exclaim.

25 Q. And Project Exclaim is the spinoff, right?

<p style="text-align: right;">Page 253</p> <p>1 A. Correct.</p> <p>2 Q. Okay. So this is the point where Think</p> <p>3 Finance has decided to split into two and -- and the</p> <p>4 co- -- and had not yet informed Victory Park about</p> <p>5 that decision?</p> <p>6 A. I would say this is the point at the -- no,</p> <p>7 it was probably the early December because in -- it</p> <p>8 was either the November board meeting of 2013 or it</p> <p>9 could have been the December board meeting of 2013,</p> <p>10 because sometimes we have our December board meeting</p> <p>11 a little bit earlier given the holidays, that we</p> <p>12 had, I believe, first discussed with our board of</p> <p>13 directors the possibility of spinning off the direct</p> <p>14 lending platform of our business, which would have</p> <p>15 at that time encompassed RISE as well as the UK as</p> <p>16 well as some other things that we were looking at</p> <p>17 doing.</p> <p>18 Q. Everything except for tribal, right?</p> <p>19 A. Everything -- well, we would consider</p> <p>20 anything that was related to the service provider</p> <p>21 platform, which at that time was primarily -- I</p> <p>22 think it was all tribal, yes.</p> <p>23 So I wouldn't say that it was finalized at</p> <p>24 that time. I would have to go back and look when it</p> <p>25 was done, but we were strongly considering doing it.</p>	<p style="text-align: right;">Page 255</p> <p>1 RISE loans with -- with them involved, and the other</p> <p>2 thing that's being discussed is the idea that this</p> <p>3 facility would move to the -- to the new company if,</p> <p>4 in fact, you did split?</p> <p>5 A. I'll answer the first question first, which</p> <p>6 was, yes, what this was related to, this particular</p> <p>7 structure was related to financing the -- the RISE</p> <p>8 product that we had launched, the state-licensed</p> <p>9 installment loan product that we had launched in</p> <p>10 2013.</p> <p>11 The second question, I wouldn't</p> <p>12 necessarily agree with that, because irrespective of</p> <p>13 whether we did a spinoff or not, as I mentioned</p> <p>14 earlier, we would need to finance the RISE</p> <p>15 facilities. So, you know, I would say that this</p> <p>16 structure would have worked had we not done a spun</p> <p>17 off, or, in retrospect, since we did a spinoff, it</p> <p>18 worked as well. But we didn't -- they didn't set up</p> <p>19 the structure because of the spinoff.</p> <p>20 MR. ACKELSBURG: All right. Let's</p> <p>21 look at 266, now moving into January of 2014.</p> <p>22 (Exhibit No. 266 marked.)</p> <p>23 A. Wow, landscaping.</p> <p>24 BY MR. ACKELSBURG:</p> <p>25 Q. Yeah, blame -- blame this on Katten. I</p>
<p style="text-align: right;">Page 254</p> <p>1 We knew that in order to do it, we would certainly</p> <p>2 have to get their approval. "They" being Victory</p> <p>3 Park Capital.</p> <p>4 Q. Why is that?</p> <p>5 A. Well, they are the lender right now to --</p> <p>6 to us directly through the RISE facility, or about</p> <p>7 to be through the RISE facility, as well as with the</p> <p>8 GPLS. And because of the corporate guarantee and</p> <p>9 lien on our assets, I'm sure -- I'm just assuming,</p> <p>10 but I'm pretty sure that, you know, at this point</p> <p>11 you've got to get them to bless any major</p> <p>12 transaction like that.</p> <p>13 MR. ACKELSBURG: Okay. And just</p> <p>14 keeping with this topic, we'll move to 265. This is</p> <p>15 Bates TF-PA 674500.</p> <p>16 (Exhibit No. 265 marked.)</p> <p>17 A. Give me one minute to review this proposed</p> <p>18 structure.</p> <p>19 (Reviews document.)</p> <p>20 Okay.</p> <p>21 BY MR. ACKELSBURG:</p> <p>22 Q. So I take it that there's -- there's sort</p> <p>23 of -- it sounds like there's sort of two things</p> <p>24 going on here in this. One is that you and Victory</p> <p>25 Park are still discussing a way to possibly fund</p>	<p style="text-align: right;">Page 256</p> <p>1 mean, we're getting -- the GPL documents are really</p> <p>2 hard to read. So I apologize on behalf of Katten.</p> <p>3 MR. SHAPIRO: Thank you. Is this 266?</p> <p>4 MR. ACKELSBURG: Yes. GPLP 161130.</p> <p>5 A. (Reviews document.)</p> <p>6 Okay.</p> <p>7 BY MR. ACKELSBURG:</p> <p>8 Q. Do you remember this e-mail?</p> <p>9 A. Not -- not specifically, but after</p> <p>10 rereading, I think I kind of understand why I sent</p> <p>11 the e-mail.</p> <p>12 Q. Okay. Earlier in this discussion, I asked</p> <p>13 you if -- if GPLS -- I think I asked you if GPLS</p> <p>14 money -- we were discussing GPLS money being</p> <p>15 rerouted into RISE, and you said, no, that's not</p> <p>16 what's going on. And I guess part of my question</p> <p>17 is -- because I knew this one was -- I had seen this</p> <p>18 one. So it looks to me like that's what you're</p> <p>19 talking about. So tell me what I -- what I</p> <p>20 misunderstood.</p> <p>21 A. I think in that earlier one -- and I'm kind</p> <p>22 of glad this is being chronologically because it</p> <p>23 kind of makes me think of how things, you know,</p> <p>24 actually happened. I think in that point in time, I</p> <p>25 really viewed GPLS and RISE SPV as two separate</p>

1 facilities, which they were.

2 At this point in time, I'm going to guess
3 why I wrote this e-mail was -- it was kind of
4 alluded to earlier. You know, I still -- we still
5 probably had a large amount of cash sitting in GPLS
6 that is reducing my credit default swap admin fee by
7 a 17 to 20 percent rate, and I'm, like, okay, you
8 know, we're getting -- RISE is growing. We have got
9 this RISE facility. You know, can you be nice to us
10 and can we just move some of that money out of GPLS
11 into RISE at that point.

12 Q. Right. That was my understanding. And
13 so --

14 A. Yeah. So that's why -- I apologize. Back
15 in October, I probably wasn't thinking that way, but
16 now here it is in January of 2014, RISE is really
17 starting to grow, you know, the -- the tribal model
18 is not originating as much, and there's a lot of
19 cash in GPLS. I'm doing what any good CFO does,
20 trying to convince my lender to divert funds from
21 one facility where they've got excess cash into
22 another so I can pay less interest.

23 MR. ACKELSBURG: Okay. 267. This one
24 actually alludes to an attachment -- makes reference
25 to an attachment, but I don't believe the attachment

1 was produced. That's purely for Richard's benefit.

2 MR. SCHEFF: Thank you.
3 (Exhibit No. 267 marked.)

4 A. (Reviews document.)
5 Okay.

6 BY MR. ACKELSBURG:

7 Q. And so is this an accurate summary of your
8 thinking about -- about the spinoff at this point in
9 time?

10 A. Well, in looking at the subject, I mean,
11 there's -- there's multiple, you know,
12 constituencies involved in a spinoff, and, you know,
13 the messaging or what they would be interested in or
14 what affects them about the spinoff could be
15 different in lots of ways.

16 So in this context this e-mail is really
17 guards towards our insurance underwriters because
18 what it's getting at -- and Badr Qureshi was my
19 treasurer at the time, and so he was responsible for
20 cooperate insurance and discussing with our
21 insurance broker, which, I believe, was Woodruff &
22 Sawyer out of the Bay area, you know, hey, we're
23 thinking about spinning off our entity as we go
24 out -- and, typically, this was -- I think our
25 corporate insurance policies typically renew in the

1 April, May time span. So that's probably why.

2 And we would -- regardless even with the
3 spinoff happening, effective, like, May 1st, 2014,
4 we would have to have corporate insurance for the
5 new entity. I was giving the reasons to him why so
6 that when he had the discussion with Woodruff &
7 Sawyer, from a corporate insurance perspective, this
8 would probably be what they would be interested in
9 at a high level, "Gee, why are you doing this
10 spinoff?"

11 Q. Now, one of the things that -- there's an
12 aspect to the spinoff that we haven't talked about
13 before, which you allude to in No. 1 where you say,
14 "The tribal litigation would hold up our ability to
15 go public."

16 And so the -- you told us, like, right
17 from the beginning when you came to Think Finance,
18 the -- the hope was to go public at some point,
19 right?

20 A. I think that would have been the primary --
21 the primary mechanism for the investors, mainly the
22 venture capitalists, would be an IPO.

23 Q. Okay. And so -- and that desire to go
24 public, to do an IPO, that -- that desire didn't go
25 away from 2007 all through the tribal period, right?

1 MR. SCHEFF: Object to the form.

2 A. I'll answer the question. From my
3 perspective, I believe my desire to take the company
4 public never changed. I mean, we always operated
5 in -- the company in a manner that we felt that an
6 IPO would be a liquidity event for our investors.
7 BY MR. ACKELSBURG:

8 Q. Okay. Well, and it would be a liquidity
9 event for the executives, too. I mean, let's be
10 frank.

11 MR. SCHEFF: Object to the form.

12 A. I could comment based on what -- never
13 mind. Yes, it would be a liquidity event for -- for
14 certain employees that had stock in the company.
15 BY MR. ACKELSBURG:

16 Q. Well, particularly, Ken, you and Jason
17 Harvison, right?

18 A. Well, and any other executive that had
19 stock options or restricted stock units as well. I
20 mean, it was more than just Ken, Jason and I that
21 had stock or stock options in the company.

22 Q. And it's true that -- that you and Ken were
23 making sort of explorations about -- about going
24 public during the -- in 2012, 2013?

25 A. I would say going all the way back to when

1 I first started in 2007, there were always
2 high-level discussions with investment bankers that
3 would be potentially interested in, you know, taking
4 us public if they felt we could go public.

5 Q. And whether it was the ACH crisis or the
6 New York litigation, the tribal aspect of your
7 business was becoming problematic from the
8 standpoint of going public; am I right?

9 MR. SCHEFF: Object to the form.

10 A. I'll answer the question. I'll rephrase it
11 a different way. I really felt as we outlined in
12 the KPMG tax opinion regarding the spinoff, that we
13 had two distinct business lines. We had the service
14 provider platform, which is where we provided
15 services to the tribes, and we also had the direct
16 lending platform where we were the direct lender
17 under RISE. We had the UK business.

18 It was Operation Choke Point, from my
19 perspective, that was really putting pressure on the
20 entire Think Finance organization; meaning, that the
21 undue stress of trying to get ACH providers, not
22 just for tribal, but Operation Choke Point was
23 really having an impact on our ability to get
24 potentially ACH providers for our RISE product.

25 We lost our -- our corporate Wells Fargo

1 checking account. I mean, I can't imagine any -- I
2 can't imagine operating a business without a basic
3 business checking account. We're not ACH
4 processing. We're not talking anything related to
5 any particular loan product. Wells Fargo told me,
6 point blank, because of the Operation Choke Point
7 and the regulators' pressure on them, to not provide
8 any type of services to Think Finance, Inc., related
9 to the space under the Operation Choke Point.

10 It got to a point where it was very
11 difficult to do business even under the state
12 license model because of the regulatory -- you know,
13 the Operation Choke Point, which I would say was
14 probably geared more towards the tribal model and
15 some other, you know, industries, but was also
16 having an impact on just our regular state license
17 model.

18 And so that was really the main impetus
19 for considering the spinoff is, gosh, we've got this
20 nice business off to the side, the direct lending
21 platform that's starting to grow, and we're having
22 difficulty getting basic checking. We're having
23 difficulty getting a big four auditor. We're having
24 difficulty getting, you know, ACH processing. Or if
25 we do, it's expensive. It's as expensive as they

1 were processing for tribal.

2 And in talking with investment bankers,
3 because of the litigation related to the tribal
4 model, it would be very difficult to take the
5 company public until the litigation related to
6 tribal eventually settled. And I don't think it
7 took a lot of rocket science to gather that that was
8 going to be years down the road, if ever.

9 And so all of those reasons were the
10 reasons why we strongly considered and proposed to
11 the board that we consider doing a spinoff.

12 MR. ACKELSBURG: Okay. And this --
13 another one in March of 2014. This is Plaintiff's
14 Exhibit 268, Bates TF-PA 108729.

15 (Exhibit No. 268 marked.)

16 A. I think these e-mail chains would be a lot
17 smaller if VPC didn't have, like, six lines between
18 their name, their address and. . .

19 BY MR. ACKELSBURG:

20 Q. They're taking -- they're taking all the
21 blame.

22 A. Sorry.

23 (Reviews document.)

24 Okay.

25 MR. SHELDON: I need another second,

1 please.

2 Okay. Thank you.

3 BY MR. ACKELSBURG:

4 Q. So can you explain to me the subject
5 with -- that's referencing the transfer of net
6 assets, the \$65 million?

7 MR. SCHEFF: Where are you referring
8 to?

9 MR. ACKELSBURG: In the middle of the
10 second page. So it's the --

11 MR. SCHEFF: Okay. Why don't you
12 direct him to it --

13 MR. ACKELSBURG: Sure.

14 MR. SCHEFF: -- so the record is clear
15 what you're doing.

16 BY MR. ACKELSBURG:

17 Q. It's the e-mail, Chris Lutes to Tom Welch,
18 regarding the GPLS split discussion. And you --
19 well, I'll read it to you. "We also need to discuss
20 the initial transaction. Looks like roughly
21 \$65 million in net assets will be divided by" --
22 "by Think Finance to Elevate. I had originally
23 accounted for this as a noncash loan by TF to EL,
24 but it's actually a reduction of TF's equity is what
25 Grant Thorton is saying. Makes sense since it is

1 technically a spinoff." Right?

2 So at this point in time -- I mean, and my
3 understanding of -- of splits or spinoffs is that
4 there are tax considerations, such -- there are tax
5 considerations in a -- in a spinoff, right? If you
6 could explain to us just generally what those are,
7 that --

8 A. Yeah, I'm --

9 MR. HERMAN: I object to form.

10 BY MR. ACKELSBURG:

11 Q. I know, I'm -- look, I'm not asking for
12 a -- I'm not asking for a tax -- I'm sorry, I'll
13 withdraw that question. I mean, that's -- that was
14 an inartful question.

15 So one of the -- the issues that's
16 involved in creating a new company out of -- out of
17 a parent company is -- is where the capital comes
18 from for the new company. The new company has to
19 start with working capital, right?

20 A. Yes.

21 Q. And because it's a spinoff, because it's,
22 essentially, a split of an existing company, that
23 working capital is coming from the original company,
24 right?

25 A. Potentially, but not necessarily.

1 Q. Okay. But that's what -- that's the
2 subject of your discussion here with Tom, right?

3 A. Not quite. And we can -- I can answer that
4 question later. This one, I think, had more to do
5 with the fact that from VPC's perspective, and what
6 started this e-mail chain was, as you can
7 appreciate, their concern. I mean, they've, you
8 know, lent to -- you know, they have the GPLS
9 facility that's going to stay behind in Think
10 Finance as part of the service provider platform to
11 the tribes, and then they have this new facility
12 with RISE that's going to be spun off into the new
13 entity Elevate.

14 When it was all combined, they felt good
15 that they had, you know, adequate coverage
16 collateral on both facilities because they had a
17 lien on all of Think Finance's assets. And now
18 they're just trying to understand when you split it,
19 you know, does anything bad happen to them from a
20 collateral perspective, are they somehow -- their
21 collateral position under either entity being
22 harmed.

23 And so what I was pointing out to Tom in
24 this e-mail, originally -- and this is where it kind
25 of gets -- the dividend and the thing was

1 originally -- you know, we always were really good
2 with -- dating back to when I first started in 2007
3 and having -- regardless of -- we had numerous legal
4 entities, as you can appreciate, for state licensed
5 lending, for the tribal models when we partnered
6 with the bank, to really kind of easily in their
7 general ledger segregate all of the assets, and the
8 assets primarily related to any lending program are
9 cash and the actual loan balances. And then we had,
10 you know, debt facilities that were typically
11 structured, you know, for each of those particular
12 programs. Like I said, we had GPLS. We had the
13 RISE debt facility.

14 And so when I originally kind of provided
15 them a model, because they wanted to see a model on
16 how the pro forma would look when we split, what I
17 did was I said, well -- I had -- I had grossed it
18 originally, saying that if you had ten -- I am going
19 to just -- 10 million of cash for RISE and 75
20 million of loans for RISE, that we would move
21 \$85 million over to RISE and the related debt
22 facility over to RISE and any retained earnings or,
23 you know, capital related to those RISE legal
24 entities over to -- I'm saying RISE. I meant
25 Elevate.

1 But what Grant Thorton, our auditors, came
2 back and said, is, no, technically, what happens is
3 you collapse all that and it's a net dividend. So
4 the cash and the loan balances go over but not the
5 related debt facility. It just comes out of the
6 capital of Think Finance. So, in essence, the
7 overall capital of Think Finance drops because it's
8 a dividend. You're not just moving over assets and
9 liabilities and a small amount of equity.

10 So I wanted to make sure Tom understood,
11 because I think there was a covenant related to the
12 overall equity position of Think Finance that, hey,
13 you know, this is now a dividend, so suddenly the
14 equity base of Think Finance will drop because it's
15 technically dividending under the -- the accounting
16 rules, not a grossed up transfer.

17 Q. When you say "dividending," we're talking
18 about a transfer of equity from -- from the -- from
19 Think to Elevate?

20 A. No, no, what we're talk- --

21 MR. HERMAN: Objection; form.

22 THE WITNESS: I'm sorry if I
23 interrupted.

24 A. No, from my perspective, what we're talking
25 about is, like I said, if you had 10 million of cash

<p style="text-align: right;">Page 269</p> <p>1 that was specifically in RISE legal entities as part 2 of Think Finance and you had 75 million of loan 3 balances for RISE that were in Think Finance, and 4 that -- and then you had a related debt facility of 5 75 million, that we would move 10 million over, 75 6 million over, 75 million over and then the small 7 amount of retained earnings. What they said was you 8 had to collapse everything, and it gets dividended 9 out of the net equity position of Think Finance. 10 BY MR. ACKELSBURG: 11 Q. Right. So that's what I'm -- so I'm -- 12 A. But it all related. And maybe it's we're 13 saying the same thing just in different manners. So 14 I apologize. 15 From my perspective, what ended up being 16 dividended over, or if it was going to be moved like 17 I originally expected, was truly just the net assets 18 related to the RISE legal entities that were being 19 spun off or the net assets and related equity 20 position of the UK that was being spun off. 21 Q. But from the standpoint of your auditor -- 22 that's who Grant Thornton is, right? 23 A. Yes. 24 Q. Okay. So from the auditor, what they were 25 telling you was that, in their mind, what -- in</p>	<p style="text-align: right;">Page 271</p> <p>1 Elevate opened -- and what's that date? Is that 2 May 1st? 3 A. May 1st, 2014. 4 Q. Okay. So May 1st, 2014, Elevate begins. 5 And you're still the CFO of Think at that point, 6 right? 7 A. CFO at Think. But for the first five 8 months, I think, through the end of September or 9 October, we considered it, like in most other 10 spinoffs, shared services where, technically, I 11 could act on behalf of both entities -- 12 Q. Right. 13 A. -- because it's impossible to build up a 14 new accounting staff immediately. 15 Q. I understand. 16 So when Elevate began as -- in operation 17 as a legal entity on May 1st, 2014, how much working 18 capital did it, in fact, begin with according to 19 your accounting -- according to your accounting 20 records -- go ahead. You're -- 21 A. I was going to say, I don't recall the 22 specific amount of capital, but that's -- from a 23 working capital -- from capital -- or assets related 24 to specific lending programs, which I don't consider 25 working capital, those moved over. So if there was</p>
<p style="text-align: right;">Page 270</p> <p>1 their judgment, what was happening was that 65 2 million of equity that's on the balance sheet of 3 Think Finance would have to move to the balance 4 sheet of Elevate? 5 A. Because it -- 6 Q. "Yes" or "no," and then -- and then you 7 can -- 8 MR. SCHEFF: He can answer the 9 question however he wants. 10 A. I will answer by expanding upon it. What 11 they were saying was, is that there are 65 million 12 of net equity -- net assets -- sorry, not net 13 equity, but net assets -- related to the direct 14 lending platform, and those needed to be dividended 15 out of Think Finance. Those net assets, again, as I 16 would say, would be related to cash specifically 17 related to the RISE or the UK programs and the loan 18 balances related to those programs. So, again, 19 everything was done clearly just on a distinct legal 20 entity basis. There was no -- if there was 21 corporate cash at Think Finance, that stayed at 22 Think Finance. It did not move over. 23 BY MR. ACKELSBURG: 24 Q. What about -- well, first of all, let me 25 just stay with the 65 million. When, in fact,</p>	<p style="text-align: right;">Page 272</p> <p>1 any RISE kind of cash-in-process, a collection 2 related to funding accounts, that moved over. If 3 there were any loan balances related to RISE, that 4 moved over to Elevate. Same with the UK. UK, you 5 can appreciate, that's pretty easy because it's a 6 collapsed international legal entity that moved 7 over. 8 The working capital to then fund payroll, 9 other, you know, ancillary expenses, that was the 10 reason why we set up the Think Finance/Elevate kind 11 of intercompany debt facility between the two 12 entities on a somewhat temporary basis, because we 13 realized, like any spinoff, you know, a lot of the 14 corporate cash is held at Think Finance. It stays 15 behind at Think Finance. 16 You know, Elevate is a new entity. It 17 needs to either borrow money from somebody or raise 18 capital from somebody. And what we agreed, and what 19 the board of directors on both companies agreed, is 20 that there would be an arm's length transaction and 21 an arm's length fair value interest rate whereby 22 Think Finance, because it was sitting on excess 23 cash -- again, as you can appreciate, the GPLS 24 portfolio was, you know, stagnated or winding down, 25 so they were getting excess cash flow from the GPLS</p>

<p style="text-align: right;">Page 273</p> <p>1 credit default swap, and they decided that it made 2 sense from a stand-alone board perspective to make a 3 loan to -- to Elevate to help them fund their 4 working capital. And so we put that facility in 5 place. My understanding is that's rather common in 6 spinoffs. 7 What we were able to do, we did initially 8 borrow from Think -- "we," Elevate, did initially 9 borrow from Think Finance under that facility to 10 fund working capital for a period of time, until, I 11 believe, it was sometime later in 2014 or early 2015 12 where Elevate actually borrowed working capital from 13 Victory Park Capital and used the proceeds to pay 14 off Think Finance. 15 So by the end, I'm a hundred percent 16 certain that by the end of 2014, whereas Think 17 Finance had lent money to Elevate to provide them 18 working capital on a temporary basis, Elevate had 19 completely paid it back because either through their 20 own other funding efforts, I think primarily from 21 Victory Park Capital, were able to raise enough 22 working capital to pay it off and use that to go 23 forward. 24 Q. You're familiar -- well, the -- one of the 25 assets that the old Think Finance company had was</p>	<p style="text-align: right;">Page 275</p> <p>1 A. So all of those products were housed on our 2 Legacy Platform. 3 Q. Okay. And so -- and I also understand that 4 in terms of the mechanics, the way that the -- the 5 spinoff was implemented with regard to the platform 6 is that there was a copy made of the data that 7 resided on the platform and that the copy went -- 8 went to RISE. Is that -- is that your 9 understanding? 10 MR. SCHEFF: Object to the form. 11 A. My understanding at a high level, and 12 appreciate I'm not a chief technology officer or an 13 IT expert in any stretch of the imagination and -- 14 I'll answer it in two manners. One is really what 15 you're getting at from your question but then also 16 from an accounting perspective, at a high level, 17 yes, there was a copy made because, to your point, 18 the Legacy Platform included the original RISE -- or 19 the original PayDay One product, so there was 20 retained earnings that, you know, moved over to 21 Elevate related to that since that was a direct 22 lending product, as well as the RISE installment 23 loan product that was a direct lender product. 24 You know, there was a lot of, you know -- 25 you know, a lot of products were -- were generated</p>
<p style="text-align: right;">Page 274</p> <p>1 its whole proprietary risk expertise, its -- its 2 decision engine and the analytics that go with it, 3 right? 4 A. Correct. 5 Q. And the -- there is something called the 6 Legacy Platform. You know what -- you know what I'm 7 referring to, right, when I refer to the Legacy 8 Platform? 9 A. Yes, I do know what you're referring to. 10 Q. Okay. And as I understand it from prior 11 testimony, that the -- that the Legacy Platform is 12 the platform on which the original PayDay One 13 product was based. It later was the platform on 14 which the two tribe -- on which the first First Bank 15 of Delaware ThinkCash product was built, and later 16 it was the same platform on which the two tribal 17 installment loan products were based. And, finally, 18 it -- when RISE was developed at Think Finance, 19 that, too, was housed in some form on the Legacy 20 Platform. You know that, right? 21 MR. HERMAN: Objection; form. 22 MR. SCHEFF: Object to the form. 23 A. I'm fine answering. Yes. 24 BY MR. ACKELSBURG: 25 Q. Yes.</p>	<p style="text-align: right;">Page 276</p> <p>1 or housed on those particular platforms. So what 2 was decided upon spinoff was, literally, at that 3 point in time, you kind of just made a copy of that 4 Legacy Platform and, you know, provided that -- this 5 is where I'm getting a little bit out of my 6 expertise -- that code or whatever was also made 7 available to Elevate, so that as of May 1st, 2014, 8 for a certain point in that time, there were two 9 copies of the Legacy Platform that were equal for 10 both companies. 11 BY MR. ACKELSBURG: 12 Q. And that -- go ahead, sure. 13 A. I'm sorry. From an accounting perspective, 14 I'm not sure that we considered that an asset on the 15 books of Elevate. We left all of that -- you know, 16 any expense or whatnot related to that would have 17 probably depreciated expense. If there was anything 18 left, it would have stayed on the books of Think 19 Finance. I may be wrong on that. We may have 20 figured out some way to split the -- maybe we did a 21 50/50 split, but. . . 22 Q. But sitting here today, you don't -- you 23 don't think it was really accounted for in the 24 accounting related to the spinoff? 25 MR. SCHEFF: Object to the form;</p>

<p style="text-align: right;">Page 277</p> <p>1 misstates the testimony.</p> <p>2 A. I don't -- I don't recall. It wouldn't</p> <p>3 have been material to the overall books because that</p> <p>4 platform had been around so long, a lot of it would</p> <p>5 have been fully depreciated.</p> <p>6 BY MR. ACKELSBURG:</p> <p>7 Q. Now, what I -- now, I want to make sure I</p> <p>8 understand what you mean by "platform." That --</p> <p>9 so as I interpreted, the description of the</p> <p>10 company's core products, the risk analytic side of</p> <p>11 that, it's that Think has developed -- that Think</p> <p>12 Finance had developed a state-of-the-art risk</p> <p>13 analytics system that relied on historical data</p> <p>14 that -- that Think had had internally as well as</p> <p>15 third-party data that it was -- that it was</p> <p>16 purchasing, and that the combination of all of that</p> <p>17 data and Think's ability to use that data and</p> <p>18 analyze that data, along with the additional data it</p> <p>19 got from third parties, was the key to the</p> <p>20 competitive edge where the -- the product that Think</p> <p>21 was most proud of. Something like that?</p> <p>22 MR. SCHEFF: Object to the form.</p> <p>23 MR. SHELTON: Let me say, there were a</p> <p>24 lot of data references in that question, and I'm</p> <p>25 lost as to what data is being discussed.</p>	<p style="text-align: right;">Page 279</p> <p>1 for kind of managing the day-to-day operations of</p> <p>2 the loan portfolio or making recommendations to the</p> <p>3 various third-party loan originators.</p> <p>4 Q. And so what I'm trying to establish is that</p> <p>5 when you said that the platform was copied, that</p> <p>6 that was the agreement that it's incorporating --</p> <p>7 it's incorporating a lot of history, a lot of work</p> <p>8 by the risk people, right?</p> <p>9 A. Well, let me -- let me recharacterize</p> <p>10 because when I first said it was copied, I was</p> <p>11 referencing more to the actual true -- when you</p> <p>12 brought up the term Legacy Loan Platform, that -- or</p> <p>13 the Legacy Platform, I interpreted that to be more</p> <p>14 of the Legacy Loan Platform, the actual loan system</p> <p>15 on which the loans are housed, not necessarily the</p> <p>16 credit decisioning aspect of all of that.</p> <p>17 Q. Well, so did --</p> <p>18 A. Because there's IT work related to that as</p> <p>19 well.</p> <p>20 Q. I understand. But when Elevate began, did</p> <p>21 it just start from scratch without any benefit of</p> <p>22 the historical work done by the Think risk analytics</p> <p>23 people?</p> <p>24 A. No, not --</p> <p>25 MR. SCHEFF: Object to the form.</p>
<p style="text-align: right;">Page 278</p> <p>1 MR. HERMAN: I'm also going to object</p> <p>2 to the form and say that that mischaracterizes the</p> <p>3 former testimony.</p> <p>4 BY MR. ACKELSBURG:</p> <p>5 Q. Okay. So we'll take it in pieces. Think</p> <p>6 Finance, before the split, had -- had risk analytic</p> <p>7 specialists working for it, right?</p> <p>8 A. Yes.</p> <p>9 Q. Okay. And their responsibility was</p> <p>10 something called a "decision engine," among other</p> <p>11 things?</p> <p>12 A. Let me phrase it this way. You know, the</p> <p>13 risk department has kind of numerous subdepartments</p> <p>14 and employees working in it. One would be those</p> <p>15 data scientists responsible for building the credit</p> <p>16 scores. It would have employees that were</p> <p>17 responsible to -- I think what you're kind of</p> <p>18 alluding to, this maintaining the IT work related to</p> <p>19 the credit decision engine, how do you get the</p> <p>20 scores that are developed into an IT platform that,</p> <p>21 you know, analyzes customer application data to help</p> <p>22 decide whether or not --</p> <p>23 Q. Yes.</p> <p>24 A. -- to approve a customer loan, and then</p> <p>25 there were also risk employees that were responsible</p>	<p style="text-align: right;">Page 280</p> <p>1 A. I'm not implying that at all. What moved</p> <p>2 over on May 1st, 2014, would have been the existing</p> <p>3 credit risk scores, decision engine related to the</p> <p>4 RISE installment loan product, related to the UK</p> <p>5 Sunny installment loan product. Any credit scores,</p> <p>6 credit information, from my perspective, IT decision</p> <p>7 engine, a lot of that may be shared. I don't know.</p> <p>8 It's getting a little bit out of my expertise in</p> <p>9 terms of how risk stored all of that data, whether</p> <p>10 it was one huge database or whether they had, you</p> <p>11 know, individual databases just for RISE and for</p> <p>12 Sunny and for the various tribal products. I don't</p> <p>13 know how they mingled or commingled all of that</p> <p>14 data.</p> <p>15 But my understanding is, is that it was</p> <p>16 pretty much just that which was necessary and</p> <p>17 applicable to Elevate and its products definitely</p> <p>18 moved over, and stuff that wasn't, you know, stayed</p> <p>19 behind. But it could have been an exact copy of</p> <p>20 everything. That's probably a question better for</p> <p>21 Jason or Michelle or Ken Rees. I don't -- I just</p> <p>22 don't have that expertise.</p> <p>23 BY MR. ACKELSBURG:</p> <p>24 Q. Well, but none of them are -- are data or</p> <p>25 risk specialists, right? So, I mean, if I really</p>

<p style="text-align: right;">Page 281</p> <p>1 wanted to know more about, like, what exactly --</p> <p>2 what exactly was the nature of the transfer from --</p> <p>3 the copy or the transfer, whatever word you want to</p> <p>4 use, that went from Think to Elevate, who would --</p> <p>5 who would know that?</p> <p>6 A. Well, one, I believe that there was some</p> <p>7 type of share -- information sharing agreement or</p> <p>8 something. There might have been an agreement as</p> <p>9 part of the spinoff between the two entities to</p> <p>10 document just that. If there wasn't, it would have</p> <p>11 probably been -- at that point in time, from an IT</p> <p>12 perspective, it would have been Bill Kontgis, who</p> <p>13 was the chief information officer of the combined</p> <p>14 entity, and he had stayed behind at Think. But he</p> <p>15 would have understood, from an IT perspective, what</p> <p>16 was being replicated. And from a credit</p> <p>17 perspective, it would have been Walt Ramsey, the</p> <p>18 chief credit officer at the time.</p> <p>19 Q. Is Walt Ramsey still with Elevate?</p> <p>20 A. No, he's no longer with Elevate.</p> <p>21 Q. Where is he?</p> <p>22 A. I don't know. He stepped down last</p> <p>23 September, I believe.</p> <p>24 Q. What about Bill Kontgis?</p> <p>25 A. Bill stayed behind at Think Finance. I</p>	<p style="text-align: right;">Page 283</p> <p>1 I'm just going to ask you -- I'm going to -- we're</p> <p>2 actually going to -- we're going to do a couple of</p> <p>3 things. One is we're going to put up on the screen</p> <p>4 one of those forecasts, but before I do that, I want</p> <p>5 to -- mostly for the benefit of all the lawyers in</p> <p>6 the room that are really interested in this, I want</p> <p>7 to sort of show them where it came from in the</p> <p>8 production, and then we'll talk about the forecast</p> <p>9 itself.</p> <p>10 You would agree that the forecast is not</p> <p>11 something that's possible to put on a couple of</p> <p>12 pieces of paper?</p> <p>13 A. I would agree with that.</p> <p>14 Q. We're talking about an Excel sheet with</p> <p>15 more than a hundred different worksheets within it,</p> <p>16 right?</p> <p>17 MR. HERMAN: Workbooks.</p> <p>18 MR. ACKELSBURG: Workbooks within it.</p> <p>19 Thank you.</p> <p>20 A. Yes.</p> <p>21 BY MR. ACKELSBURG:</p> <p>22 Q. Yes. Okay. So what I want to do is, I'm</p> <p>23 going to mark this document as P-271, mainly just to</p> <p>24 show you and the lawyers where this all comes from.</p> <p>25 (Exhibit No. 271 marked.)</p>
<p style="text-align: right;">Page 282</p> <p>1 don't believe he's there anymore.</p> <p>2 Q. Do you know where he is?</p> <p>3 A. No, I don't.</p> <p>4 MR. ACKELSBURG: All right. This</p> <p>5 would be a good time for a break.</p> <p>6 THE VIDEOGRAPHER: We are off record</p> <p>7 at 4:17 p m.</p> <p>8 (Break taken, 4:17 p m. to 4:45 p m.)</p> <p>9 THE VIDEOGRAPHER: We are back on the</p> <p>10 record at 4:45 p m.</p> <p>11 BY MR. ACKELSBURG:</p> <p>12 Q. Mr. Lutes, thank you for your patience.</p> <p>13 We're almost done here.</p> <p>14 A. Sure.</p> <p>15 Q. A while back in the deposition, we were</p> <p>16 talking about the monthly package that -- well,</p> <p>17 monthly report that went to Victory Park that</p> <p>18 finance would send out, and that that included the</p> <p>19 large board dec and also included a very, very large</p> <p>20 spreadsheet. I think it was called the forecast,</p> <p>21 the BOD forecast, or something like that. You know</p> <p>22 what I'm talking about, right?</p> <p>23 A. Generally, yes. It could change from month</p> <p>24 to month, but yes.</p> <p>25 Q. All right. So what we're going to do is,</p>	<p style="text-align: right;">Page 284</p> <p>1 BY MR. ACKELSBURG:</p> <p>2 Q. Just so you see it, at this -- we're</p> <p>3 getting -- this is actually coming from the Great</p> <p>4 Plains -- the Great Plains -- the GPLS production,</p> <p>5 the Victory Park production, and it's an -- it</p> <p>6 starts with an e-mail, GPLP 383459. And if you look</p> <p>7 at the cover, you'll see that this is Linda Rogenski</p> <p>8 sending this to the various people that get -- that</p> <p>9 are designated to get the report. This is sent on</p> <p>10 June 20, 2014, with all the various monthly</p> <p>11 reporting items attached. Do you see that?</p> <p>12 A. Yes.</p> <p>13 Q. Okay. And then there are a bunch of things</p> <p>14 that are -- so you see that she -- what she attaches</p> <p>15 is something called the GPLS books, the current</p> <p>16 Exhibit A, form of compliance certificate. Do you</p> <p>17 see that? And what I've done is on the board</p> <p>18 package, I didn't -- I didn't copy the whole hundred</p> <p>19 pages, but I do have the first and last page, just</p> <p>20 so -- I have no questions about that. I just want</p> <p>21 you to see, in fairness to you, where -- where I'm</p> <p>22 getting all this from. Okay?</p> <p>23 A. Sure.</p> <p>24 Q. And then, finally, the last item you'll</p> <p>25 see, "File Provided Natively," and it's entitled</p>

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<p>1 "June 2014 BOD Forecast Final," and it's an Excel. 2 MR. SCHEFF: It's the last page. 3 A. Yes. 4 BY MR. ACKELSBURG: 5 Q. Okay. So now what I'm going to do is I'm 6 going to put up on the screen that Excel sheet, 7 which we -- we got with this production. Okay? And 8 then you'll be able to see it and manipulate it, 9 too. I mean, you'll be able to see it on the screen 10 there. Okay. 11 Does this document look familiar? Does 12 this look like the -- 13 A. Yeah, I'm familiar with this file format. 14 Q. Okay. And if we go -- there's a tab for 15 the TF balance sheet. Do you see -- that's the tab 16 that we're on now. Do you see that? 17 A. Yes. 18 Q. Okay. And the way this is organized, you 19 can see that it has actual numbers for January 2014 20 through May of 2014, and then -- and then you get 21 future months that are labelled as forecasts. So 22 there's a -- there's a difference between actual and 23 forecast, right? 24 A. Yeah, I think this would reflect the actual 25 results through May 31st, and the forecasts would</p>	<p>1 managers, like, Jason and Michelle. It would be -- 2 and if this was post-spinoff, it would be probably 3 just whoever was running -- Michelle would have 4 stayed at Think Finance post-spinoff. So it would 5 have looked at potential marketing volumes for the 6 tribes, potential losses based on risk. Just 7 various assumptions from parts of the business unit 8 or just within the finance accounting department. 9 Q. Okay. Now, from this sheet, can you show 10 us the spinoff retained earnings? 11 A. Can you scroll down? 12 Q. I think you can, but we'll do it for you. 13 A. How do I do it? With my finger? 14 Q. I thought you had -- there's no -- oh, 15 there's no mouse there. All right. We'll do it. 16 So look and confirm that you'll see what 17 we're doing there. Right? I think we're there at 18 the screen, I think that we're now. You can see it, 19 right? 20 A. Yes. 21 Q. Okay. So what do you show for the retained 22 earnings at Think on May -- end of May 2014? 23 A. At the end of May 2014 -- and, really, what 24 I'll reference -- well, I'll answer your question, 25 and then I'll reference one other line item. On --</p>
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<p>1 represent the forecasted model for the Think -- in 2 this particular case, the Think Finance balance 3 sheet for the rest of the year, I am going to 4 assume, on a -- this is an assumption. Might need 5 to drill -- on a post-split basis, post-spinoff 6 basis, but I'm not sure. I'd have to look at that. 7 Q. Okay. But my question for now is simply 8 just to confirm that the columns that have "Actual" 9 over them, the numbers that would be in those 10 columns represent the real transactional numbers 11 that come from the general ledger of the company? 12 A. It may not be exact in terms of, like, 13 following Generally Accepted Accounting Principals 14 in terms of, you know, how we would -- this model -- 15 if you looked at the December 31st column, it might 16 not translate exactly into the audited financials, 17 but it would be a fair representation, yes. 18 Q. Okay. 19 A. And it would be populated from the general 20 ledger. 21 Q. Yes. Okay. And what are the forecast 22 numbers? 23 A. The forecast numbers would be based upon, 24 you know, various forecasted assumptions that 25 finance would gather in discussions with the product</p>	<p>1 at May 30th, 2014, May 31st, the total equity of 2 Think Finance post-spinoff would have been 3 \$55.8 million. If you reference back up to line 69, 4 Row 69, what would have been contributed would 5 have -- as part of the spinoff -- and that's per 6 this model. I would have to go back and, you know, 7 verify it based upon, you know, the final audit 8 because I think when we audited -- when Grant 9 Thorton did a separate audit of Elevate, they would 10 have audited the opening balance sheet. 11 But if this spreadsheet was correct, it 12 would have showed -- tied to those audited 13 financials, it would have showed that, roughly, 14 77.3 million of net assets would have been 15 contributed from Think Finance to Elevate. 16 Q. And you could check that on the Elevate 17 side, right? I mean, so, for example -- Elevate is 18 a public company, right? And because it's a public 19 company, your financials are actually filed with 20 the -- with the SEC on a periodic basis; am I right? 21 A. Well, as I just said, even going back to 22 that in my prior answer, if this model is correct -- 23 and looking at it, I am going to assume it probably 24 is correct -- you know, the open -- the 2014 audited 25 financials for Elevate, which we would have been</p>

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<p>1 required to produce -- we weren't public, but we</p> <p>2 would have been -- just as part of the VPC debt</p> <p>3 facility, they require audited financials. There</p> <p>4 would have been an audit of the opening balance</p> <p>5 sheet by Grant Thornton, and we would have to tie</p> <p>6 that amount back to the opening balance sheet. But</p> <p>7 I'm assuming it would probably tie or come pretty</p> <p>8 close.</p> <p>9 Q. Okay.</p> <p>10 A. If this was done in -- if I can add one</p> <p>11 other comment, the only potential change was, you</p> <p>12 know, this being produced in June of 2014 was</p> <p>13 clearly in advance of the ultimate audit done</p> <p>14 sometime in -- during the first quarter of 2015.</p> <p>15 It's quite possible that Grant Thornton could have</p> <p>16 come up with some type of proposed audit</p> <p>17 adjustments. Or as I mentioned earlier, this model</p> <p>18 wasn't necessarily made to reflect the way the GAAP</p> <p>19 financials, the audited financials actually play</p> <p>20 out.</p> <p>21 Q. And is there a formula attached to that --</p> <p>22 to that cell? In other words, where did -- how do</p> <p>23 you -- how do you arrive at that number, the</p> <p>24 \$77.3 million? You're --</p> <p>25 A. My guess, since it's -- since it's an</p>	<p>1 A. Which year are you looking in, and what are</p> <p>2 you --</p> <p>3 Q. Well, let's say -- let's say 2013, yeah.</p> <p>4 A. Okay.</p> <p>5 Q. All right. So, now, we're now looking at a</p> <p>6 tab that's called "Product P&L 2013," right?</p> <p>7 A. Yes. But it's the -- the P&L only down</p> <p>8 through EBITDA. It's not the full net income. It</p> <p>9 wouldn't include interest, expense, taxes,</p> <p>10 depreciation, some other line items that fall below</p> <p>11 EBITDA.</p> <p>12 Q. Okay. But this is a way that -- but this</p> <p>13 particular workbook is a way that the finance</p> <p>14 department can assess the relative profitability of</p> <p>15 different products, right? That's one of the</p> <p>16 functions it -- that's the whole point of this</p> <p>17 exercise, right?</p> <p>18 A. Yes.</p> <p>19 Q. Okay. And so -- and what you have listed</p> <p>20 here would be the different product lines that Think</p> <p>21 had in this particular year. We're looking at 2013,</p> <p>22 right?</p> <p>23 A. Yes.</p> <p>24 Q. And so we have RISE. We have the</p> <p>25 installment loan product. And just to be clear, ILP</p>
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<p>1 actual hard copy number, you know, typed in there,</p> <p>2 that that would have been based on the April 30th</p> <p>3 transaction spinoff date. And as you can imagine,</p> <p>4 given a spinoff, the accounting finance department</p> <p>5 played really, really close attention to what that</p> <p>6 number was, again, subject to audit at the end of</p> <p>7 the year.</p> <p>8 But that number probably would have come</p> <p>9 from the detail of the net assets based on all the</p> <p>10 various legal entities that were transferred from</p> <p>11 Think Fiance over to the Elevate entity. So it was</p> <p>12 probably the net sum of the net assets transferred.</p> <p>13 Q. Now, am I -- am I correct that in this --</p> <p>14 in this spreadsheet, you also keep track of profit</p> <p>15 and loss on a product specific basis?</p> <p>16 A. To the best that we can using assumptions,</p> <p>17 but yes.</p> <p>18 Q. Okay. So if you'll watch what we do here,</p> <p>19 what we're going to do is move to the product</p> <p>20 specific part of the tabs within the -- within the</p> <p>21 spreadsheet. Okay?</p> <p>22 A. Sure.</p> <p>23 Q. Okay.</p> <p>24 A. If you want, I can probably do it.</p> <p>25 Q. Yeah, go ahead.</p>	<p>1 would be Plain Green and Great Plains Lending</p> <p>2 together, right?</p> <p>3 A. Yes, it would.</p> <p>4 Q. LOC represents Mobiloans, correct?</p> <p>5 A. Correct.</p> <p>6 Q. And then you have UK is what you're doing</p> <p>7 in England. RTO is rent-to-own. And then you have</p> <p>8 two other product lines, Card and Elastic, with --</p> <p>9 with not a lot of -- not a lot of revenue attached</p> <p>10 to them, right?</p> <p>11 A. Correct.</p> <p>12 Q. So --</p> <p>13 A. But it also highlights, by the way, on</p> <p>14 Row 16 the amount of profit-sharing paid to the</p> <p>15 tribes in that particular year, which was</p> <p>16 \$28.7 million.</p> <p>17 Q. Right. And, actually -- so that's a --</p> <p>18 that's a good point. Well -- and I'll get to that</p> <p>19 in a minute, but -- I'll take that point, but first</p> <p>20 let me say that what this shows is that at least in</p> <p>21 2013, RISE lost -- if we just look at the EBITDA,</p> <p>22 RISE lost about \$10.9 million, right?</p> <p>23 A. Uh-huh (affirmative response).</p> <p>24 Q. The installment loan product earned</p> <p>25 \$126 million, correct?</p>

<p style="text-align: right;">Page 293</p> <p>1 A. Before interest expense.</p> <p>2 Q. And that's after paying the tribes a profit</p> <p>3 share of \$22.3 million, right?</p> <p>4 A. But, again, before paying GPLS their 17 to</p> <p>5 20 percent fixed return.</p> <p>6 Q. Okay. And the line of credit that's</p> <p>7 Mobiloans, that was also a money maker, not -- not</p> <p>8 anywhere near as much a money maker as the</p> <p>9 installment loan product, right, but still it made</p> <p>10 27 million after paying the Tunica a profit share of</p> <p>11 6.4 million, right?</p> <p>12 A. Correct.</p> <p>13 Q. Okay. The UK product was a loser, right,</p> <p>14 at \$24 million, right, during this year?</p> <p>15 A. It lost money. I wouldn't call it a loser.</p> <p>16 Q. I'm sorry, I don't --</p> <p>17 A. I know.</p> <p>18 Q. It lost money. As did RTO and the other</p> <p>19 two products, correct?</p> <p>20 A. Yes, sir.</p> <p>21 Q. Okay. So during this year, the two</p> <p>22 products that made money -- the two product lines</p> <p>23 that made money were the tribal products, the ILP</p> <p>24 based at Great Plains and Plain Green and the LOC</p> <p>25 based at Mobiloans, right?</p>	<p style="text-align: right;">Page 295</p> <p>1 am going to -- it's not letting me drive it.</p> <p>2 Q. My associate is here saying you know it a</p> <p>3 whole lot better than we do, so go ahead.</p> <p>4 A. Okay. So I'm looking at 2013. So there</p> <p>5 would have been in 2013 49.1 million of interest</p> <p>6 expense backed out of the tribal profits, and then</p> <p>7 it would have been taxed at, roughly, the 40 percent</p> <p>8 effective tax rate. So if I go back to the 2013</p> <p>9 product P&L, you would -- these two would have</p> <p>10 combined to 153 million, back out 49 million for</p> <p>11 simplicity can we just say, and it rounds down to --</p> <p>12 Q. And you're combining now ILP and LOC?</p> <p>13 A. Yes, that's right.</p> <p>14 Q. Okay. So if you combine --</p> <p>15 A. A hundred million and then you tax it at</p> <p>16 40 percent, after tax, it would have been probably,</p> <p>17 roughly, about 60 million, and there would have been</p> <p>18 some depreciation expense.</p> <p>19 Q. Well -- okay. So, I mean, we could -- we</p> <p>20 could -- we can -- let's just establish what those</p> <p>21 numbers are. So before the ILP had --</p> <p>22 (Interruption in proceedings.)</p> <p>23 BY MR. ACKELSBURG:</p> <p>24 Q. So we started with the product specific</p> <p>25 P&Ls, and we had a bit --</p>
<p style="text-align: right;">Page 294</p> <p>1 A. Yes, that would be correct.</p> <p>2 Q. Okay. And now before, when you were</p> <p>3 telling us about this, I think, you said 30/30/40</p> <p>4 split, I think what you -- as I understand what you</p> <p>5 told us, you came to that number by looking at the</p> <p>6 consolidated financial statements, right?</p> <p>7 A. Generally speaking, yes.</p> <p>8 Q. And so when you look at the consolidated</p> <p>9 financial -- financial statements, you're basically</p> <p>10 looking at the -- the total company with all the --</p> <p>11 with all the -- sort of the wins and losses all</p> <p>12 combined, right?</p> <p>13 A. Yes. But as I also point out on this</p> <p>14 spreadsheet, these numbers are before interest</p> <p>15 expense. For RISE and the UK, those were</p> <p>16 self-funded products. I believe, at the time, there</p> <p>17 wouldn't have been any interest expense associated</p> <p>18 with those products. Whereas, with ILP and LOC, if</p> <p>19 you go to the full 2014 P&L tab, I can point out</p> <p>20 what the total amount of interest expense that we</p> <p>21 would have had to have backed out of the --</p> <p>22 Q. Why don't we do that. Why don't you show</p> <p>23 us which tab.</p> <p>24 A. Can you do that drop-down here again? Or,</p> <p>25 here, you know what, let me -- if you don't mind, I</p>	<p style="text-align: right;">Page 296</p> <p>1 (Interruption in proceedings.)</p> <p>2 A. I'm pointing out on how the -- on that</p> <p>3 product --</p> <p>4 BY MR. ACKELSBURG:</p> <p>5 Q. Wait, wait, wait.</p> <p>6 MR. ACKELSBURG: Are you on? Yeah,</p> <p>7 okay.</p> <p>8 BY MR. ACKELSBURG:</p> <p>9 Q. Go ahead. I'm sorry.</p> <p>10 A. Apologies.</p> <p>11 You know, on this -- what I have</p> <p>12 highlighted on this particular spreadsheet is the</p> <p>13 115-million-273. This would have been, you know,</p> <p>14 from my perspective -- I think ties to the audited</p> <p>15 financial somehow, but it also ties back to that</p> <p>16 product 2013. Like I said, you know, all of this</p> <p>17 interest expense line item would have related to the</p> <p>18 VPC GPLS debt facility, so you would have backed</p> <p>19 that out of all the profits.</p> <p>20 I would say a majority of the depreciation</p> <p>21 and amortization at the time would have related to</p> <p>22 the IOP programs, and then they also would have been</p> <p>23 taxed at 40 percent. So, you know, by no means</p> <p>24 does, you know, the tribal on a gross basis --</p> <p>25 our -- our profitability from tribal is, you know,</p>

1 significantly less.

2 And you can see, again, what I highlighted
3 earlier when I was referencing the 60 million, you
4 can see a little bit more. But 63 million of net
5 income through 2011 through 2013 is what Think
6 Finance earned.

7 I understand your point of -- that there
8 were, you know, other products that were in a loss
9 position at that particular time that would have,
10 you know, grossed up the tribal net income that we
11 would have made during that time span, but what I
12 had said earlier in my testimony was Think Finance
13 ended up making, roughly, 60 million of net
14 income --

15 Q. But when you set --

16 A. -- during that three-year period.

17 Q. But that reference to -- just to be clear,
18 the reference to that, roughly, 30/30/40 split, when
19 you said that Think Finance made, essentially, the
20 same amount of money that the tribes, you're
21 basically looking at the total --

22 A. Of Think Finance. Which is what I said. I
23 can revise that, and if you want, we can probably
24 quickly generalize, you know, what this would have
25 said.

1 Like I said, if you add up column C and D
2 from an EBITDA perspective, you're at 153 million.
3 Give me the liberty of just rounding down to
4 150 million for simplicity's sake. And as I showed
5 on that other spreadsheet, the interest expense was,
6 roughly, 50 million. So the tribal would have made
7 pretax in 2013, roughly, \$100 million. After tax,
8 if it was a simplistic 40 percent tax rate, it would
9 have made about 60 million of net income after tax
10 in 2013.

11 You could probably do the same thing for
12 2012 where the profits -- as you can see, in fact,
13 Mobiloans in 2012 was a loser, whereas, PayDay
14 One -- because at the time, this would have been the
15 Legacy payday product, not the new launch of the
16 RISE product. You know, the -- the same where
17 you're picking up and, pardon me for saying picking
18 on, 2013, you know, you can use the same analogy,
19 but it will probably lower our profits from the
20 tribal program in 2012, or even in 2011 when we
21 started up.

22 In fact, in 2011 you can see that the
23 EBITDA for the combined two was roughly 28 million.
24 And if you back out all of the interest expense in
25 2011 related to that program, I would guess it would

1 probably be even less than the net income, that we
2 were generating most of our net income in 2011 and
3 2012 off of our Legacy payday product, not the
4 tribal products.

5 So I admit, it was kind of a gross
6 generalization, but I'll bet it kind of balances
7 out, because you can see in 2011 and in 2012 there
8 was almost 40 million of interest expense. And,
9 again, all of that would have related to GPLS and
10 the tribal programs.

11 So net -- I mean, Irv, we can play with
12 the percentages, but I'll bet I could go back and,
13 you know, if you wanted as an additional thing for
14 all of you, I could do a more exact calculation as
15 to how that played out. But, whereas, 2013 we
16 probably ended up making more off the tribal
17 program, and 2011, 2012, was kind of a startup
18 operation and we ended up incurring far
19 significantly less.

20 And, in fact, in a couple of cases, you
21 know, when you spin up, you end up losing money off
22 the particular product that particular year, even
23 though you can see Think Finance, in general, had
24 13.7 million of net income in 2011 and 27.1 million
25 in 2012, and 21.9 million in 2013. And I'll bet --

1 I don't have privy to the audited financials for
2 2014, but my guess is, is that you would see the
3 tribes and GPLS making a lot more net income than
4 the tribal operations did in 2014 just because it
5 was in wind-down mode and having to still pay a lot
6 of interest expense to GPLS.

7 MR. ACKELSBERG: Okay. Just one
8 minute.

9 I have no further questions.

10 MR. HERMAN: Mr. Ackelsberg, I just --
11 before we finish with this document, I would just
12 like to state for the record that what has been
13 shown to Mr. Lutes here is not in the form that it
14 was produced by GPLS. There are certain sheets that
15 were not present initially which were just not in
16 the original, what was shown publicly to GPLS.
17 There are sheets that were, I guess, hidden or
18 unhidden, but they were not in what was produced by
19 GPLS in its original form. This has been altered.

20 MR. ACKELSBERG: Yeah, I mean, what
21 we'll do is we will send it on disk. I mean, you
22 can make --

23 MR. HERMAN: I just pulled it from the
24 database. I'm telling you --

25 MR. ACKELSBERG: Okay. Well, we

Christopher Lutes

<div>Page 301</div> <div><div></div><div>1 haven't done anything with --</div><div>2 MR. HERMAN: -- what has happened with</div><div>3 this exhibit. I just want you to be aware and want</div><div>4 the record to be clear that there were alterations.</div><div>5 I'm not saying there were alterations to any</div><div>6 numbers, I'm not saying there are any alterations</div><div>7 elsewhere, but in the form that was produced by</div><div>8 GPLS, there has been an alteration, at least one.</div><div>9 MR. ACKELSBURG: In the form that was</div><div>10 produced by GPLS?</div><div>11 MR. HERMAN: Correct. Meaning --</div><div>12 okay. The native file.</div><div>13 (Interruption in proceedings.)</div><div>14 MR. ACKELSBURG: I just want to</div><div>15 understand exactly what you're saying, Dave. So</div><div>16 you're saying -- so what we put up was the</div><div>17 spreadsheet that we got from Victory Park.</div><div>18 MR. HERMAN: I'm telling you it is not</div><div>19 exactly what was sent.</div><div>20 MR. ACKELSBURG: By -- by Think</div><div>21 Finance to Victory Park?</div><div>22 MR. HERMAN: This is not the native</div><div>23 file. There have been alterations to the file.</div><div>24 MR. ACKELSBURG: Are you saying that</div><div>25 we have -- we have somehow done something?</div></div>	<div>Page 303</div> <div><div></div><div>1 barely understand this document. So. . .</div><div>2 MR. HERMAN: I do.</div><div>3 MR. SCHEFF: Patrick, do you have any</div><div>4 questions?</div><div>5 MR. DAUGHERTY: No.</div><div>6 MR. SHELDON: Dan?</div><div>7 MR. SHAPIRO: No.</div><div>8 MR. SCHEFF: Matt?</div><div>9 MR. SHELDON: Just a half hour or so.</div><div>10 If you wouldn't mind turning back to</div><div>11 Exhibit -- no, I'm just kidding. I'm done.</div><div>12 MR. SCHEFF: Dave?</div><div>13 MR. HERMAN: No questions on behalf of</div><div>14 Mr. Rees.</div><div>15 MR. SCHEFF: I have none.</div><div>16 THE VIDEOGRAPHER: We are off the</div><div>17 record at 5:13 p m.</div><div>18 (Deposition concluded at 5:13 p.m.)</div><div>19</div><div>20</div><div>21</div><div>22</div><div>23</div><div>24</div><div>25</div></div>
<div>Page 302</div> <div><div></div><div>1 MR. HERMAN: There are columns or</div><div>2 workbooks on here which were hidden or otherwise not</div><div>3 part of the package which have been unhidden,</div><div>4 specifically that 2013 product P&L was not an active</div><div>5 worksheet, it was not a worksheet that was present</div><div>6 at the bottom. You have to take some steps to alter</div><div>7 that to make it visible again.</div><div>8 MR. ACKELSBURG: Well, I understand</div><div>9 that the -- that this is so large that you can't see</div><div>10 everything at once. But I'm not --</div><div>11 MR. HERMAN: No, this is beyond that,</div><div>12 Mr. Ackelsberg. This is not mere scrolling or --</div><div>13 these are sheets that were not active, these are</div><div>14 sheets which were not presented specifically in this</div><div>15 spreadsheet. They may have been used in earlier</div><div>16 versions of the spreadsheet, but they are not a part</div><div>17 of the workbooks, as Mr. Byers corrected earlier,</div><div>18 that were active and shown to GPLS in this document</div><div>19 when it was produced to GPLS and when GPLS produced</div><div>20 it to the Commonwealth.</div><div>21 MR. ACKELSBURG: Well, all -- well,</div><div>22 what we'll do is provide a copy of the document</div><div>23 that -- of this document, the document that -- and</div><div>24 you will do with it as you please. But I can assure</div><div>25 that we haven't done anything to this document. I</div></div>	<div>Page 304</div> <div><div></div><div>1 CHANGES AND SIGNATURE</div><div>2 CHRISTOPHER LUTES MAY 3, 2018</div><div>3 Reason Codes: (1) to clarify the record; (2) to</div><div>4 conform to the facts; (3) to correct a transcription</div><div>5 error; (4) other (please explain)</div><div>6 PAGE LINE CHANGE REASON</div><div>7</div><div>8</div><div>9</div><div>10</div><div>11</div><div>12</div><div>13</div><div>14</div><div>15</div><div>16</div><div>17</div><div>18</div><div>19</div><div>20</div><div>21</div><div>22</div><div>23</div><div>24</div><div>25</div></div>

76 (Pages 301 to 304)

<p style="text-align: right;">Page 305</p> <p>1 SIGNATURE</p> <p>2</p> <p>3 I, CHRISTOPHER LUTES, have read the</p> <p>4 foregoing deposition, or have had it read to me, and</p> <p>5 hereby affix my signature that same is true and</p> <p>6 correct, except as noted above.</p> <p>7</p> <p>8</p> <p>9 CHRISTOPHER LUTES</p> <p>10</p> <p>11</p> <p>12</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>	<p style="text-align: right;">Page 307</p> <p>1 proceeding was taken, and further that I am not</p> <p>2 financially or otherwise interested in the outcome</p> <p>3 of the action.</p> <p>4 Subscribed and sworn to on this the 7th</p> <p>5 day of May, 2018.</p> <p>6</p> <p>7</p> <p>8</p> <p>9 CHRISTY R. SIEVERT, CSR, RPR</p> <p>10 Texas CSR 8172</p> <p>11 Expiration Date: 12/31/2018</p> <p>12 Huseby, Inc.</p> <p>13 Firm No. 660</p> <p>14 7000 North Mopac Freeway</p> <p>15 2nd Floor</p> <p>16 Austin, Texas 78731</p> <p>17 (512) 687-0421 (tel)</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>
<p style="text-align: right;">Page 306</p> <p>1 IN THE UNITED STATES DISTRICT COURT</p> <p>2 FOR THE EASTERN DISTRICT OF PENNSYLVANIA</p> <p>3 COMMONWEALTH OF PENNSYLVANIA *</p> <p>4 BY ATTORNEY GENERAL JOSH * SHAPIRO,</p> <p>5 Plaintiff, * *</p> <p>6 VS. * Civil Action</p> <p>7 * No. 14-7139-JCJ</p> <p>8 THINK FINANCE, INC., et al., *</p> <p>9 Defendants. *</p> <p>10 REPORTER'S CERTIFICATION</p> <p>11 DEPOSITION OF CHRISTOPHER LUTES</p> <p>12 MAY 3, 2018</p> <p>13</p> <p>14 I, CHRISTY R. SIEVERT, CSR, RPR, in</p> <p>15 and for the State of Texas, hereby certify to the</p> <p>16 following:</p> <p>17 That the witness, CHRISTOPHER LUTES, was</p> <p>18 duly sworn by the officer and that the transcript of</p> <p>19 the oral deposition is a true record of the</p> <p>20 testimony given by the witness;</p> <p>21 I further certify that the signature of</p> <p>22 the deponent was requested by the deponent or a</p> <p>23 party and is to be returned within 30 days from date</p> <p>24 of receipt of the transcript. If returned, the</p> <p>25 attached Changes and Signature Page contains any</p> <p>changes and the reasons therefor;</p> <p>I further certify that I am neither</p> <p>counsel for, related to, nor employed by any of the</p> <p>parties or attorneys in the action in which this</p>	

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<p style="text-align: right;">Page 1</p> <p style="text-align: center;">IN THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF PENNSYLVANIA</p> <p style="text-align: center;">- - -</p> <p>COMMONWEALTH OF : PENNSYLVANIA : Plaintiff : : VS. : CIVIL ACTION NUMBER : 2:14-CV-07139 THINK FINANCE, INC., : ET AL., : Defendants : - - -</p> <p style="text-align: center;">APRIL 11, 2018</p> <p style="text-align: center;">- - -</p> <p>Videotaped deposition of LEE TYLER REMPEL, was taken pursuant to notice at 1600 Arch Street, Suite 300, Philadelphia, Pennsylvania, beginning at or about 9:00 a.m. before Jeannine Cancelliere, Court Reporter and Notary Public and David Levin, Videotape Operator, there being present.</p> <p style="text-align: center;">KAPLAN, LEAMAN AND WOLFE Registered Professional Reporters 230 S. Broad Street, Suite 1303 Philadelphia, Pennsylvania 19102 (215) 922-7112</p>	<p style="text-align: right;">Page 3</p> <p>1 APPEARANCE (continued) 2 3 GOODWIN PROCTER BY: MATTHEW SHELDON, ESQUIRE BY: JENNY K. MORRIS, ESQUIRE 4 901 New York Avenue, NW Washington, DC 20001 5 Phone: (202) 346-4000 msheldon@goodwinprocter.com 6 Representing Think Finance 7 8 VAN NESS FELDMAN BY: PATRICK DAUGHERTY, ESQUIRE 9 1050 Thomas Jefferson St., NW Washington, DC 20007-3877 10 Phone: (202) 298-1800 11 Representing National Credit Adjusters LLC pod@vnf.com 12 13 14 15 16 17 18 19 20 21 22 23 24</p>
<p style="text-align: right;">Page 2</p> <p>1 APPEARANCES: 2 3 LANGER, GROGAN & DIVER, P C BY: IRV ACKELSBURG, ESQUIRE 4 BY: JOHN J GROGAN, ESQUIRE 1717 Arch Street, Suite 4130 Philadelphia, Pennsylvania 19103 5 Phone: (215) 320-5701 Representing the Plaintiff 6 iackelsberg@langergrogan.com 7 8 ATTORNEY GENERAL'S OFFICE BY: SAVERIO MIRARCHI, ESQUIRE 9 1600 Arch Street, 3rd Floor Philadelphia, Pennsylvania 19103 10 Phone: (215) 560-2445 Representing the Defendant 11 smirarchi@attorneygeneral.gov 12 13 MONTGOMERY McCracken BY: JONATHAN P BOUGHRUM, ESQUIRE 14 123 South Broad Street Philadelphia, Pennsylvania 19109 15 Phone: (215) 772-7228 Representing Ken Rees 16 jboughrum@mmwr.com 17 18 KATTEN, MUCHIN, ROSENMAN LLP BY: J MATTHEW HAWS, ESQUIRE 19 Chicago, Illinois 60661-3693 Phone: (312) 902-5319 20 Representing Victory Park matthew haws@kattenlaw.com 21 22 23 24</p>	<p style="text-align: right;">Page 4</p> <p>1 - - - 2 I N D E X 3 - - - 4 LEE TYLER REMPEL PAGE 5 BY MR. ACKELSBURG 7 6 7 - - - 8 E X H I B I T S 9 - - - 10 EXHIBIT NO. DESCRIPTION PAGE 11 P-65 Organizational Chart 47 12 P-66 Due Diligence Summary 74 13 P-67 E-Mails 80 14 P-68 E-Mails 88 15 P-69 Transmittal & Agreement 91 16 P-70 E-Mails 99 17 P-71 E-Mails 102 18 P-72 E-Mails 104 19 P-73 Loan Sale Agreement 109 20 P-74 E-mails 113 21 P-75 Loan Sale Agreement 113 22 P-76 Loan Sale Agreement 113 23 P-77 Loan Sale Agreement 119 24 P-78 Loan Sale Agreement 119</p>

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<p>1 - - -</p> <p>2 E X H I B I T S</p> <p>3 - - -</p> <p>4 EXHIBIT NO. DESCRIPTION PAGE</p> <p>5 P-79 Loan Sale Agreement 119</p> <p>6 P-80 E-mail 140</p> <p>7 P-81 Amended Agreement 147</p> <p>8 P-82 Amended Agreement 149</p> <p>9 P-83 E-mails 154</p> <p>10 P-84 Sale Agreement (Execution Copy) 154</p> <p>11 P-85 Sale Agreement (Final Copy) 154</p> <p>12 P-86 Service Agreement 162</p> <p>13 P-87 E-Mails 164</p> <p>14 P-88 Spreadsheet 178</p> <p>15 P-89 Summary Report 181</p> <p>16 P-90 Compliance Log 187</p> <p>17 P-91 E-Mails 203</p> <p>18 P-92 E-Mails 206</p> <p>19 P-93 Due Diligence Questionnaire 208</p> <p>20 P-94 E-Mails 212</p> <p>21 P-95 E-Mails 215</p> <p>22 P-96 E-Mails 219</p> <p>23 P-97 E-Mails 225</p> <p>24 P-98 E-Mails 225</p>	<p>1 testified as follows:</p> <p>2 - - -</p> <p>3 VIDEOTAPE OPERATOR: Please</p> <p>4 proceed, counsel.</p> <p>5 - - -</p> <p>6 EXAMINATION</p> <p>7 - - -</p> <p>8 BY MR. ACKELSBERG:</p> <p>9 Q. Good morning Mr. Rempel.</p> <p>10 A. Good morning.</p> <p>11 Q. I have already introduced myself. I'm</p> <p>12 Irv Ackelsberg and I'm special counsel to the</p> <p>13 Commonwealth, to the Attorney General. As you</p> <p>14 know, this is an action against Think Finance,</p> <p>15 its former CEO, Ken Rees, a hedge fund named</p> <p>16 Victory Park Capital against your company,</p> <p>17 National Credit Adjusters. You understand</p> <p>18 that, right?</p> <p>19 A. Yes.</p> <p>20 Q. So just a few preliminaries before we</p> <p>21 get into the substance, have you ever been</p> <p>22 deposed before?</p> <p>23 A. No.</p> <p>24 Q. Okay. So I'm sure your lawyer described</p>
Page 6	Page 8
<p>1 - - -</p> <p>2 (Whereupon Exhibit Rempel-1 was</p> <p>3 marked for identification.)</p> <p>4 - - -</p> <p>5 VIDEOTAPE OPERATOR: We're now</p> <p>6 on the record. My name is David Levin, I am</p> <p>7 the videographer employed by On the Record.</p> <p>8 This is a video deposition in the United</p> <p>9 States District Court for the Eastern District</p> <p>10 of Pennsylvania, Civil Action Number</p> <p>11 14-7139-JCJ. Today's date is Wednesday, April</p> <p>12 11th, 2018 and the video time is 9:11 a.m.</p> <p>13 This deposition is being held at</p> <p>14 1600 Arch Street, Third Floor, Philadelphia,</p> <p>15 Pennsylvania in the matter of Commonwealth of</p> <p>16 Pennsylvania by Attorney Josh Shapiro versus</p> <p>17 Think Finance Incorporated, Et Al. The</p> <p>18 deponent is Lee T. Rempel. Counsel will be</p> <p>19 noted on the stenographic record. The court</p> <p>20 reporter is Jeannine Cancelliere. She will</p> <p>21 now swear in the witness.</p> <p>22 - - -</p> <p>23 LEE TYLER REMPEL, after having</p> <p>24 been first duly sworn, was examined and</p>	<p>1 how this works, but I have to just confirm</p> <p>2 that you understand on the record. So if you</p> <p>3 can indulge me for just a little bit of these</p> <p>4 preliminary questions. I just want to make</p> <p>5 sure that you understand that the way that</p> <p>6 we're going to proceed is I'm going to ask you</p> <p>7 questions and wait for your answer, and that</p> <p>8 both my question, your answer and any comments</p> <p>9 made by the lawyers in the room will be part</p> <p>10 of a written transcript that the court</p> <p>11 reporter will prepare afterwards. You</p> <p>12 understand that, right?</p> <p>13 A. Yes.</p> <p>14 Q. Okay. And that transcript could</p> <p>15 possibly be used by one of the parties in this</p> <p>16 case. Do you understand that?</p> <p>17 A. Yes.</p> <p>18 Q. And that you just received an oath</p> <p>19 administered by the court reporter and you're</p> <p>20 appearing here under oath as if we were</p> <p>21 sitting in a federal courtroom. Do you</p> <p>22 understand that?</p> <p>23 A. Yes.</p> <p>24 Q. Okay. And because the official</p>

<p style="text-align: right;">Page 9</p> <p>1 transcript, the official record -- because the</p> <p>2 official record of this deposition is the</p> <p>3 transcript, as opposed to the videotape, it's</p> <p>4 really important that you answer all of the</p> <p>5 questions verbally. So even though all of us</p> <p>6 in the room will be able to interpret, for</p> <p>7 example, a shrug or some kind of non-verbal</p> <p>8 gesture, the court reporter can't do that. So</p> <p>9 a nod won't work. You actually have to say</p> <p>10 yes, because we're working with this</p> <p>11 transcript.</p> <p>12 A. I understand.</p> <p>13 Q. Okay. And I also want to make sure it's</p> <p>14 clear to you that if you don't understand a</p> <p>15 question, it's perfectly fine to say, I don't</p> <p>16 understand; or you can explain to me what part</p> <p>17 of the question you want me to clarify.</p> <p>18 That's perfectly fine.</p> <p>19 But if you answer the</p> <p>20 question, I'm going to assume you understood</p> <p>21 what I was asking you, right? You understand</p> <p>22 that, right?</p> <p>23 A. Yes, I do.</p> <p>24 Q. Your lawyer may, and I'm sure he will,</p>	<p style="text-align: right;">Page 11</p> <p>1 sleep, anything like that, that would prevent</p> <p>2 you from giving this deposition today your</p> <p>3 complete attention?</p> <p>4 A. No.</p> <p>5 Q. Okay. So let's begin. First, I want to</p> <p>6 make sure that you understand that you're</p> <p>7 appearing here today on behalf of the</p> <p>8 defendant, National Credit Adjusters with</p> <p>9 respect to certain topics. Do you understand</p> <p>10 that?</p> <p>11 A. Yes.</p> <p>12 Q. Okay. And I just want to confirm, I'm</p> <p>13 going to show you an exhibit that we've</p> <p>14 pre-marked Rempel-1. I want to make sure that</p> <p>15 you've seen that before, the list of topics</p> <p>16 that will be covered today.</p> <p>17 A. Yes.</p> <p>18 Q. Fine. Okay fine. Let's start with a</p> <p>19 little bit of background regarding the company</p> <p>20 and your responsibilities there. Can you</p> <p>21 describe the nature of the company's business?</p> <p>22 A. The nature of National Credit Adjusters</p> <p>23 business from existence has been as a debt</p> <p>24 buyer purchasing charged off accounts</p>
<p style="text-align: right;">Page 10</p> <p>1 object to some questions, but as I'm sure he</p> <p>2 has explained to you, unless he directs you</p> <p>3 not to answer, you still have to answer the</p> <p>4 question. All right?</p> <p>5 A. Okay.</p> <p>6 Q. So the way it will work is, I ask a</p> <p>7 question, the lawyer will object or some other</p> <p>8 lawyer may have a comment; and then after they</p> <p>9 finish saying what they need to say, then you</p> <p>10 have to go and answer the question, unless</p> <p>11 your lawyer directs you not to answer the</p> <p>12 question. Okay?</p> <p>13 A. Okay.</p> <p>14 Q. We will take breaks. You can also ask</p> <p>15 for a break. This isn't an endurance course.</p> <p>16 We'll be taking plenty of breaks over the</p> <p>17 course of the day. But if you need a break,</p> <p>18 just ask for one. You just need to answer</p> <p>19 whatever question was pending at the time, and</p> <p>20 once you finish that we can break and you can</p> <p>21 take off and come back. Okay?</p> <p>22 A. Okay.</p> <p>23 Q. Last, is there any reason such as</p> <p>24 illness, hearing disorder, medication, lack of</p>	<p style="text-align: right;">Page 12</p> <p>1 receivables, predominantly consumer loans.</p> <p>2 With those charged off consumer loans we have</p> <p>3 call centers and we engage in collection</p> <p>4 activity for the purpose of recovering those</p> <p>5 delinquent receivables. That's our primary</p> <p>6 focus as an organization.</p> <p>7 Q. In terms of the kind of consumer loans</p> <p>8 that you tend to work on, is the company</p> <p>9 specialized in certain areas of consumer</p> <p>10 loans?</p> <p>11 A. We've really purchased and collected on</p> <p>12 many different consumer loans over the course</p> <p>13 of time. To say that we specialize in a</p> <p>14 specific product line, I don't know if I'd</p> <p>15 consider us specialized in any specific</p> <p>16 product line.</p> <p>17 Over the past eight to ten</p> <p>18 years, we have primarily purchased and</p> <p>19 collected on loans that would be considered in</p> <p>20 the short term arena, as well as internet</p> <p>21 based installment loans, lines of credit. The</p> <p>22 main reason for us migrating to that segment</p> <p>23 line has mainly to do with price points on the</p> <p>24 debt that we purchase.</p>

<p style="text-align: right;">Page 13</p> <p>1 Over the course of time we</p> <p>2 have purchased and collected on product lines</p> <p>3 like consumer bank cards, consumer retail,</p> <p>4 things such as HSBC, those business lines</p> <p>5 would be retail credit cards, bank cards,</p> <p>6 somebody goes down to Lowe's or whatnot and</p> <p>7 receives credit. We've also worked in the</p> <p>8 lines of Sterling Jewelers credit, as well as</p> <p>9 Wells Fargo, Chase.</p> <p>10 So over the last 15 years we</p> <p>11 really have collected on many different</p> <p>12 consumer lines of credit, if you will, or</p> <p>13 products.</p> <p>14 Q. Well, let me start with the category</p> <p>15 that you mentioned first, the short term</p> <p>16 consumer loans. That also goes by the name</p> <p>17 Payday Loans, right?</p> <p>18 A. In the past people have considered it</p> <p>19 Payday. I think over the last six or seven</p> <p>20 years, it has really transitioned to short</p> <p>21 term, as we know it today. But one could</p> <p>22 consider it Payday, yes.</p> <p>23 Q. And if we -- and the installment -- you</p> <p>24 mentioned also, online installment or line of</p>	<p style="text-align: right;">Page 15</p> <p>1 50 percent.</p> <p>2 Q. Okay. Has that been true -- is that</p> <p>3 what it is today, north of 50 percent?</p> <p>4 A. Yes.</p> <p>5 Q. And what about three or four years ago,</p> <p>6 also north of 50 percent?</p> <p>7 A. I don't know if I can answer that. If I</p> <p>8 made an assumption, I would say yes. The last</p> <p>9 three or four years predominantly what we were</p> <p>10 purchasing at the time, I can't confirm that</p> <p>11 it would be north of 50 percent,</p> <p>12 predominantly.</p> <p>13 Q. Okay. But it's at least 50 percent?</p> <p>14 A. Yes.</p> <p>15 Q. Where is the company located?</p> <p>16 A. Our corporate offices are located in</p> <p>17 Hutchinson, Kansas. We have remote call</p> <p>18 centers in Phoenix, Arizona. And we have a</p> <p>19 branch in Jamaica.</p> <p>20 Q. The island in Jamaica?</p> <p>21 A. Montego Bay.</p> <p>22 Q. So the call center work is happening</p> <p>23 either in Phoenix or Jamaica?</p> <p>24 A. No, we do have a call center in</p>
<p style="text-align: right;">Page 14</p> <p>1 credit. You're only talking about high rate</p> <p>2 loans, right? High rate credit?</p> <p>3 A. High rate in the form of interest?</p> <p>4 Q. Yes.</p> <p>5 A. Yes. They are typically higher than a</p> <p>6 loan, a consumer loan on an asset that is</p> <p>7 going to be paid back over the course of five</p> <p>8 years, six years, mortgage loans, et cetera.</p> <p>9 In comparing a short term loan interest rate</p> <p>10 versus those, one could consider it higher,</p> <p>11 yes.</p> <p>12 Q. Well, I mean just to be clear, we're</p> <p>13 talking about credit that's generally in the</p> <p>14 triple digits, more than 100, 200 sometimes</p> <p>15 300 percent APR, right?</p> <p>16 A. Yes.</p> <p>17 Q. Okay. If we could just take the Payday</p> <p>18 Loans, the installment loans, the line of</p> <p>19 credit, all of these high rate kinds of</p> <p>20 products, how big a portion of NCA's portfolio</p> <p>21 of debt would be those kind of consumer</p> <p>22 obligations?</p> <p>23 A. I don't know that I could give you a</p> <p>24 specific number, but I would say it's north of</p>	<p style="text-align: right;">Page 16</p> <p>1 Hutchinson. That was where our initial</p> <p>2 company got started. We had a call center</p> <p>3 there, and over the course of time had</p> <p>4 branched out to other markets and locations.</p> <p>5 Q. The high rate consumer loans that we're</p> <p>6 talking about, Payday, online installment or</p> <p>7 credit lines, are they handled -- tend to be</p> <p>8 handled in one of the three offices or in all</p> <p>9 three?</p> <p>10 MR. DAUGHERTY: Object to</p> <p>11 form.</p> <p>12 THE WITNESS: They're handled</p> <p>13 in all of the offices. We really don't have</p> <p>14 specific offices for specific products. It's</p> <p>15 really a strategy that is applied whether</p> <p>16 you're sitting in Hutchinson or sitting in</p> <p>17 Phoenix or Jamaica. A collector could be</p> <p>18 working on the same team or division, let's</p> <p>19 say, that somebody is in Hutch, as well as in</p> <p>20 Phoenix, as well as in Jamaica. So they're</p> <p>21 seeing the same collection strategy, as well</p> <p>22 as accounts.</p> <p>23 BY MR. ACKELSBERG:</p> <p>24 Q. How many employees does NCA have at the</p>

<p style="text-align: right;">Page 17</p> <p>1 moment?</p> <p>2 A. At the moment, roughly 300.</p> <p>3 Q. What is your current position with the</p> <p>4 company?</p> <p>5 A. Chief executive officer.</p> <p>6 Q. How long have you held that title?</p> <p>7 A. Since November of 2016.</p> <p>8 Q. And when did you start with the company?</p> <p>9 A. In 2008.</p> <p>10 Q. When you were hired, what position were</p> <p>11 you hired into?</p> <p>12 A. I was hired into a director role</p> <p>13 overseeing the Hutchinson call center. At</p> <p>14 that time, that was the only call center we</p> <p>15 had.</p> <p>16 Q. And then between -- when did the other</p> <p>17 offices open?</p> <p>18 A. Phoenix opened I believe in 2012, May;</p> <p>19 Jamaica we opened in June of 2016. And to be</p> <p>20 clear, Phoenix -- we actually have two small</p> <p>21 offices. One is on the southeastern side,</p> <p>22 Chandler, Arizona. The other one is on the</p> <p>23 northwest side in Peoria, Arizona. The Peoria</p> <p>24 office, I'm sorry, opened in October of 2014.</p>	<p style="text-align: right;">Page 19</p> <p>1 for and it seemed very interesting to me.</p> <p>2 Often times a person thinks</p> <p>3 of call centers or collections to be just a</p> <p>4 bunch of people on the telephone making phone</p> <p>5 calls from a list. What stoked my interest</p> <p>6 was the analytical side, you know, from a</p> <p>7 strategic approach and that there's so much</p> <p>8 more to being successful in the debt</p> <p>9 collection industry.</p> <p>10 So that's what -- obviously I</p> <p>11 interviewed well and got an opportunity.</p> <p>12 Q. What would -- in your view, what is the</p> <p>13 key to success? What has been the key to</p> <p>14 NCA's success?</p> <p>15 A. NCA has had success and it has had</p> <p>16 failures. For me, the key to being</p> <p>17 successful, you know, in the collection</p> <p>18 business is probably similar to what's being</p> <p>19 successful in other industries, as well. I'm</p> <p>20 a type of person that believes in -- I use the</p> <p>21 analogy of blocking and tackling well and</p> <p>22 execution, not creating self-inflicted fires</p> <p>23 et cetera, and really focusing on, you know,</p> <p>24 the basics, you know not over complicating,</p>
<p style="text-align: right;">Page 18</p> <p>1 Q. Did you hold other positions in the</p> <p>2 company between 2008 when you were hired to</p> <p>3 run the Hutchinson call center and your</p> <p>4 elevation to CEO?</p> <p>5 A. Yes, I moved from a director of</p> <p>6 operations over the Hutchinson call center to</p> <p>7 a vice president of operations over all of our</p> <p>8 domestic call centers. At the time we only</p> <p>9 had domestic call centers.</p> <p>10 I held that vice president of</p> <p>11 operations title until I was named chief</p> <p>12 executive officer.</p> <p>13 Q. So you were vice president from when</p> <p>14 until November 2016?</p> <p>15 A. From 2013 until 2016.</p> <p>16 Q. And were you -- at the time you were</p> <p>17 hired, were you already working in the debt</p> <p>18 collection field?</p> <p>19 A. I was not. I recently had graduated</p> <p>20 from Wichita State University in 2007.</p> <p>21 Collection is -- often you'll hear people say</p> <p>22 they never expect to get into or that be their</p> <p>23 career. Hutchinson, Kansas is a small town.</p> <p>24 And there was a job opening that I interviewed</p>	<p style="text-align: right;">Page 20</p> <p>1 you know, your strategy and looking for a</p> <p>2 quick win, so to speak. It's developing a</p> <p>3 good foundation of operating in an ethical and</p> <p>4 compliant manner, and one that people believe</p> <p>5 in and want to work for and have confidence in</p> <p>6 their leadership team.</p> <p>7 I think that will ultimately</p> <p>8 provide a successful environment. Over the</p> <p>9 years, NCA hasn't been successful. There was</p> <p>10 good years, and over the past five years we</p> <p>11 have been in very challenging times from a</p> <p>12 financial perspective. We have gone through a</p> <p>13 lot of changes and I've got a tall task in</p> <p>14 front of me.</p> <p>15 Q. What account -- what accounts were those</p> <p>16 challenges over the last five years?</p> <p>17 A. A lot of things, you know, pricing when</p> <p>18 you're a debt buyer changes a lot of things.</p> <p>19 If you don't buy right, it's going to be very</p> <p>20 difficult to ever turn a profit on, you know,</p> <p>21 if you overpay for something. I guess that's</p> <p>22 typical in any business or industry. But from</p> <p>23 2000 really '10 to late 2015, we saw price</p> <p>24 increases on the debt purchases to levels</p>

<p style="text-align: right;">Page 21</p> <p>1 that, you know, made it very difficult.</p> <p>2 We experienced high levels of</p> <p>3 attrition at the collector level, which we</p> <p>4 believe that it takes roughly 12 months to</p> <p>5 grow and develop a collector into somebody</p> <p>6 that becomes an asset for you.</p> <p>7 So turning people over early</p> <p>8 on makes it very difficult to, you know,</p> <p>9 continue to perform. I believe we have made</p> <p>10 poor decisions over the course of time from,</p> <p>11 you know, from a capital standpoint. And what</p> <p>12 I mean by that is, if you pay too much for</p> <p>13 something and you're financing it at high</p> <p>14 rates, you have very small margins. And if</p> <p>15 you make a mistake or don't perform, you can</p> <p>16 see poor performance financial results.</p> <p>17 We've also, as you know, have</p> <p>18 had our share of regulatory challenges as it</p> <p>19 relates to New York, New York City, Arkansas,</p> <p>20 Connecticut, Maryland, that we've, you know,</p> <p>21 over time had to deal with. A small company</p> <p>22 like us, when you have very important matters</p> <p>23 like those, it can take, you know, your focus</p> <p>24 away from just the day-to-day operations. And</p>	<p style="text-align: right;">Page 23</p> <p>1 the first ten years of you being there or the</p> <p>2 company?</p> <p>3 A. The existence of the company.</p> <p>4 Q. And that was roughly 2001 or so; does</p> <p>5 that sound about right?</p> <p>6 A. Yes. So it was privately funded, you</p> <p>7 know. In the last five to seven years, we've</p> <p>8 utilized different credit facilities within</p> <p>9 the industry, folks such as Credit Max. I'm</p> <p>10 not sure if you're aware or know who they are.</p> <p>11 They typically fund, you know, debt</p> <p>12 purchasing, a lot of traditional banks or</p> <p>13 local small town banks. It's not a space that</p> <p>14 they understand, nor do they know what to do</p> <p>15 with a bad debt file as collateral, right.</p> <p>16 So that's really how we've</p> <p>17 been funded. Up until 2012, portfolio sales</p> <p>18 were more prevalent from a strategic</p> <p>19 standpoint. A person or NCA would typically</p> <p>20 buy a debt file, manage, service it for 12 to</p> <p>21 18 months. And it had qualified buyers on the</p> <p>22 back end that would purchase it -- call it a</p> <p>23 back end flow.</p> <p>24 That was important from a</p>
<p style="text-align: right;">Page 22</p> <p>1 it's very easy and very quick for things to,</p> <p>2 you know, get off track from just a day-to-day</p> <p>3 standpoint.</p> <p>4 Q. Let me ask you just a couple of</p> <p>5 follow-up questions.</p> <p>6 A. Sure.</p> <p>7 Q. You mentioned some challenges in terms</p> <p>8 of -- on the capital side. So in order to</p> <p>9 purchase high volumes of consumer debt, you</p> <p>10 need to have a source of capital to finance</p> <p>11 those purchases, right?</p> <p>12 A. Yes.</p> <p>13 Q. And so how does that work in terms of</p> <p>14 NCA? Do you have credit lines? Do you have</p> <p>15 big investors? How do you get your capital to</p> <p>16 buy these loans?</p> <p>17 MR. DAUGHERTY: Object to</p> <p>18 form.</p> <p>19 THE WITNESS: Over the course</p> <p>20 of time, the capital has changed. In the</p> <p>21 first ten years, the partners put in their own</p> <p>22 capital.</p> <p>23 BY MR. ACKELSBURG:</p> <p>24 Q. When you talk about the first ten years,</p>	<p style="text-align: right;">Page 24</p> <p>1 capitalization standpoint because you had</p> <p>2 money coming in from the debt sale, as opposed</p> <p>3 to when you buy something today, it may take</p> <p>4 five to seven years before you start to see a</p> <p>5 recognized profits.</p> <p>6 Q. So let me make sure I understand. So</p> <p>7 what you would -- you would have a financial</p> <p>8 source to finance the purchase of debt, but</p> <p>9 you also would have a market that you knew you</p> <p>10 could sell the debt after you have worked the</p> <p>11 accounts for a year or 18 months?</p> <p>12 MR. DAUGHERTY: Object to</p> <p>13 form.</p> <p>14 BY MR. ACKELSBURG:</p> <p>15 Q. That's kind of the way -- that was the</p> <p>16 basic model that you used previously?</p> <p>17 MR. DAUGHERTY: Object to</p> <p>18 form.</p> <p>19 THE WITNESS: That was the</p> <p>20 strategy of the company.</p> <p>21 BY MR. ACKELSBURG:</p> <p>22 Q. Up until when?</p> <p>23 A. Up until roughly 2012. I can say that</p> <p>24 not every product line or purchase would be</p>

<p style="text-align: right;">Page 25</p> <p>1 resold. But that was part of the company's 2 strategy. 3 Q. Let's just focus on Payday. Really for 4 purposes of today's discussion, we're 5 primarily talking about the Payday and online 6 installment and line of credit. You 7 understand that, right? 8 A. Yes. 9 Q. So with regard to the description that 10 you gave as to the model up until 2012, we're 11 talking that applies to the high rate consumer 12 loans that we've been discussing? 13 MR. DAUGHERTY: I apologize 14 for interrupting, but I just want to ask for a 15 clarification. The deposition notice made 16 repeated reference to capital C, capital L 17 Consumer Loans as it relates to this case. 18 And I just want to be clear when you're asking 19 the witness questions, if you can distinguish 20 between what you consider to be short term 21 loans generally or when you use the phrase 22 Consumer Loans, meaning it as defined in the 23 deposition notice. 24 MR. ACKELSBURG: We're going</p>	<p style="text-align: right;">Page 27</p> <p>1 the owners. You know, up until -- really 2 2012, that's the way it was funded. During 3 that time, you know, purchasing a forward flow 4 or a purchase of bad debt file, if you work it 5 for 12 to 18 months and then have a back and 6 sell, it helps from a cash flow standpoint 7 because you have income coming in or cash 8 coming in, you know, on that sale, as opposed 9 to continuing to collect it over the next four 10 and a half years, which would spread that cash 11 flow out. It just aided, you know, from a 12 strategic standpoint in the ability to 13 continue to purchase every month most forward 14 flows or debt purchases that come on a monthly 15 basis, that's what you're contractually agreed 16 to or obligated to buy a fund, and as you 17 stated earlier, it can get very cash 18 intensive. 19 So as part of the company's 20 strategy, it wasn't just the company's 21 strategy, it was very normal in the industry 22 to resell portfolio, you know, to a secondary 23 buyer. 24 Q. But then something happened in 2012.</p>
<p style="text-align: right;">Page 26</p> <p>1 to get very shortly to the Think Finance 2 relationship. I appreciate the clarification. 3 BY MR. ACKELSBURG: 4 Q. We're really still just in the broad 5 background of how the business functions with 6 regard to this class of consumer debt. Okay? 7 A. Yes. 8 Q. All right. So as I understand what 9 you've told us, is that up until 2012 NCA's 10 model with regard to this form of consumer 11 debt was to finance the purchase of loan 12 portfolios with the expectation that after the 13 company worked the accounts for a period of 14 roughly a year to 18 months, it could then 15 resell those -- the balances left to someone 16 else? 17 MR. DAUGHERTY: Object to 18 form, object on the grounds that it 19 mischaracterizes prior testimony. 20 BY MR. ACKELSBURG: 21 Q. You can answer. 22 A. I will back up. Like I stated 23 previously, the company originally was funded, 24 privately funded by its partners, its members,</p>	<p style="text-align: right;">Page 28</p> <p>1 What happened in 2012 or roughly about that 2 time? 3 MR. DAUGHERTY: Object to 4 form. 5 THE WITNESS: At that time 6 the CFPB dot frank changed the landscape. I 7 do believe that companies such as ourselves, 8 as well as the credit issuers didn't really 9 know what direction, you know, that things 10 were going to go as it relates to debt sales. 11 Everybody did though, have concern that, you 12 know, the discussion about vicarious liability 13 and different things that have been spoken 14 about or tossed around at the federal level, 15 that it was just smarter and safer for the 16 issuers to change their contracts to state 17 that, you know, there can be no resale of the 18 portfolio. 19 A lot of folks did that, as 20 well as large credit card issuers until they 21 knew and had a better understanding of what 22 the market and the regulatory side of things, 23 you know, how it was going to shake out. 24 You know, a lot of it was not</p>

<p style="text-align: right;">Page 29</p> <p>1 necessarily by our choice, it was, you know, 2 often times when we negotiate or at those 3 times when Brad Hochstein negotiate a contract 4 or forward flow of a credit issuer, you would 5 do that for a 12-month time period. And once 6 that expires, you would renegotiate the 7 pricing market changes. And at that time we 8 saw a majority of the issuers or products that 9 we were purchasing went to a no resale clause 10 in those contracts, you know, just to protect 11 themselves. 12 I think at that time, you 13 know, the industry not just on the collection 14 front but the lineage side of things, you 15 know, felt that that's the direction that the 16 regulatory environment was headed. 17 Q. You used a term forward flow, and I 18 think you -- I think the course of your 19 testimony, I think you've explained it, but I 20 want to make sure I understand what you said. 21 So a forward flow refers to 22 an ongoing relationship with a particular 23 credit issuer, such that there would be an 24 expectation of periodic purchases from that</p>	<p style="text-align: right;">Page 31</p> <p>1 if you will. We call it a flow. Does that 2 answer your question? 3 BY MR. ACKELSBURG: 4 Q. Yeah, I think I understand. You also 5 mentioned the regulatory challenges, you said, 6 that the company had. And you mentioned New 7 York, Arkansas, Connecticut, Maryland. Can 8 you explain what was the nature of those 9 challenges? 10 MR. DAUGHERTY: Object to 11 form. 12 THE WITNESS: Each one was 13 potentially a little different. You know, the 14 allegations, you know, in those orders related 15 to loans that didn't adhere to the user rates 16 within their state. Not only that, but over 17 the course of time, the company had purchased 18 loans that, you know, were considered not just 19 usurious but unlicensed, as we know here. 20 Those New York, New York 21 State, Maryland, really all but Arkansas, that 22 was predominantly the allegation, that we 23 collected on usurious loans or unlicensed 24 loans, you know, above and beyond the state</p>
<p style="text-align: right;">Page 30</p> <p>1 issuer by NCA over a particular period of 2 time. Is that what we mean by a forward flow 3 agreement? 4 MR. DAUGHERTY: Objection to 5 form. 6 THE WITNESS: Yes, and just 7 to clarify, it's a term that the industry 8 uses. But yes, it could be quarterly charge 9 off installments where your flow would be -- 10 you've committed to purchasing the charge offs 11 of a credit lender or issuer on a quarterly 12 basis. And, you know, within the contract 13 sometimes you'll see that there's an expected 14 volume, you know, not to go over or under. 15 So it's just a way to plan 16 staff. The credit lender needs to, you know, 17 be able to plan for their debt sales and 18 budget et cetera, as well as a company like us 19 who needs to be able to do the same. 20 So ultimately you sign a 21 contract that will have monthly packages that 22 will be available for purchase in that 23 contract. We agree to purchase them, you 24 know, over the course of that, you know, flow,</p>	<p style="text-align: right;">Page 32</p> <p>1 cap. And that's really the target of those 2 complaints. 3 BY MR. ACKELSBURG: 4 Q. Were those allegations correct? 5 A. We didn't -- 6 MR. DAUGHERTY: I'll object 7 to the question on the grounds that it calls 8 for a legal conclusion. But you can answer 9 Tyler. 10 THE WITNESS: We didn't agree 11 with the allegations. We reached a consent 12 order agreement and ultimately ended up having 13 to pay back consumers above and beyond, in 14 most cases, what was collected above and 15 beyond the state cap. 16 BY MR. ACKELSBURG: 17 Q. Was the New York case about Payday or 18 high rate installment loans? 19 MR. DAUGHERTY: Object to 20 form. 21 THE WITNESS: I don't know 22 that it specifically was about Payday or high 23 rate installment loans, as much as it was 24 about loans that ultimately the APR was higher</p>

<p style="text-align: right;">Page 33</p> <p>1 than the state allowed, you know, rate. 2 BY MR. ACKELSBURG: 3 Q. Does -- let's talk about the company 4 today. Does the company have a -- does the 5 company do some form of review or due 6 diligence regarding loan portfolios that it 7 purchases, as to the legality of the 8 particular loans? 9 MR. DAUGHERTY: Object to 10 form. 11 THE WITNESS: Yes, we do. We 12 take that very seriously because it has cost 13 us over the course of time. We typically 14 review, you know, each potential purchase or 15 product, we put it through what we consider an 16 onboarding process. We have a process that we 17 want to evaluate, not just the legality of it, 18 but the reputation of the issuer, whoever is 19 providing the credit, the states in which they 20 operate in, you know, the licenses they carry 21 within those states, as well as the licenses 22 that they, you know, had at the time of the -- 23 when the loans were issued. 24 We do a background check on</p>	<p style="text-align: right;">Page 35</p> <p>1 What's the basis of your understanding of the 2 criteria that Brad Hochstein applied. Make 3 sure we have -- it's Hochstein, 4 H-O-C-H-S-T-E-I-N. 5 A. Yes. 6 Q. He's the former CEO, right? 7 A. Yes. 8 Q. Okay. And he was also funding some of 9 the purchases himself? 10 MR. DAUGHERTY: Object to 11 form. 12 THE WITNESS: I personally 13 don't know the capital side of, you know, who 14 put in their own capital from day one, et 15 cetera. 16 BY MR. ACKELSBURG: 17 Q. So we're talking about -- let's say when 18 you started in 2008 and you were running the 19 Hutchinson call center, did you have any 20 understanding at that time of how the company 21 decided what debt it was going to purchase? 22 A. At that time when I started in 2008, 23 early in my tenure at NCA, I can answer that 24 question with, no, I didn't know.</p>
<p style="text-align: right;">Page 34</p> <p>1 the company, like they will be doing on us. 2 And we have to answer questions about the 3 cases we just discussed. We evaluate each new 4 product line or potential purchase to make 5 sure that it's not going to put us in harm's 6 way. 7 Q. Some of these things that you described 8 are things that you put in place when you 9 became the CEO? 10 MR. DAUGHERTY: Object to 11 form. 12 THE WITNESS: Formally, you 13 know, I believe over the course of time the 14 company was informally doing evaluations. 15 Brad Hochstein, in the past was, you know, 16 responsible for the purchasing. And I can't 17 definitively say what his exact process was. 18 It wasn't necessarily documented. But I do 19 know that he -- I believe he had a process of 20 evaluation that he did. 21 BY MR. ACKELSBURG: 22 Q. Is that based on descriptions by him to 23 you? How do you -- or just your inferences 24 from looking at things since you became CEO?</p>	<p style="text-align: right;">Page 36</p> <p>1 Q. When you started, was the Hutchinson 2 call center collecting Payday Loans? 3 MR. DAUGHERTY: Object to 4 form. 5 THE WITNESS: I believe so. 6 I believe a small -- a small amount. At that 7 time I believe it was when Brad really started 8 to purchase the short term loans. 9 BY MR. ACKELSBURG: 10 Q. Because it got to a point of -- you said 11 50 percent or more. So what happened to shift 12 into the Payday market? 13 A. What caused it? 14 Q. Yes. 15 A. Largely price points on the consumer 16 bank card side of things. They just continued 17 to rise, basically pricing a small company 18 like us out of that market. 19 Q. So the credit card debt became too 20 expensive, so you had to find another market 21 to focus on? 22 A. I would say that's a fair representation 23 of that. 24 Q. Okay. So we're talking about 2010,</p>

<p style="text-align: right;">Page 37</p> <p>1 2011, that Hochstein is buying more and more</p> <p>2 of this kind of -- the high rate Payday</p> <p>3 installment loans, other forms of online</p> <p>4 consumer debt, right?</p> <p>5 MR. DAUGHERTY: Object to</p> <p>6 form.</p> <p>7 THE WITNESS: Yes. In</p> <p>8 addition to that product line, Brad and the</p> <p>9 company was buying other products like</p> <p>10 Sterling Jewelers, HSVC Retail, I believe.</p> <p>11 Those two we were purchasing up through</p> <p>12 roughly the 2012, don't quote me on the</p> <p>13 timeframe there.</p> <p>14 But you're really asking, in</p> <p>15 my mind, about the velocity of how quickly the</p> <p>16 short term lending segment became more of a</p> <p>17 primary product; is that correct?</p> <p>18 Q. Yes, yes.</p> <p>19 A. You know, it just continued to increase,</p> <p>20 I would say really as I started in 2008 and</p> <p>21 each year it just became more of a primary,</p> <p>22 you know, product line for us until today.</p> <p>23 Q. Now when you described the process that</p> <p>24 you instituted now as a formal matter to</p>	<p style="text-align: right;">Page 39</p> <p>1 form.</p> <p>2 THE WITNESS: Aware of any,</p> <p>3 you know, formal documented structure or</p> <p>4 process, I can say I was not. I don't know</p> <p>5 that it existed.</p> <p>6 BY MR. ACKELSBURG:</p> <p>7 Q. Did Brad differentiate, as far as you</p> <p>8 knew, between states he was willing to operate</p> <p>9 in? And when I say operate in, meaning would</p> <p>10 he -- would he -- would it matter to him what</p> <p>11 state the consumer resided in, of the debt he</p> <p>12 what buying?</p> <p>13 MR. DAUGHERTY: Object to</p> <p>14 form.</p> <p>15 THE WITNESS: Yes, I do know</p> <p>16 that it would matter on several fronts. You</p> <p>17 know each state performs a little differently.</p> <p>18 BY MR. ACKELSBURG:</p> <p>19 Q. What do you mean perform?</p> <p>20 A. You know, from a collections standpoint,</p> <p>21 you know, just a performance standpoint on one</p> <p>22 side; and from a compliance standpoint and a</p> <p>23 regulatory standpoint. You know, I know that</p> <p>24 he viewed some states to be more aggressive</p>
<p style="text-align: right;">Page 38</p> <p>1 really look carefully at the reputation of the</p> <p>2 credit issuer, you're getting the loans from</p> <p>3 the states in which they are operating,</p> <p>4 whether they have licenses.</p> <p>5 What -- did you see any signs</p> <p>6 of that during the increase in velocity, let's</p> <p>7 say 2010, 2011; were you seeing any signs of</p> <p>8 that kind of review that you consider to be</p> <p>9 important today?</p> <p>10 MR. DAUGHERTY: Object to</p> <p>11 form.</p> <p>12 THE WITNESS: Can you clarify</p> <p>13 what you mean by signs?</p> <p>14 BY MR. ACKELSBURG:</p> <p>15 Q. Well, sure. I mean you became -- well,</p> <p>16 let's talk about by the time you were -- well</p> <p>17 let's talk about -- let's say 2012, that</p> <p>18 range, just before you became director of --</p> <p>19 the vice president for operations.</p> <p>20 Were you aware of any due</p> <p>21 diligence that Brad or anyone else at the</p> <p>22 company was doing with regard to the Payday</p> <p>23 Loans it was buying?</p> <p>24 MR. DAUGHERTY: Object to</p>	<p style="text-align: right;">Page 40</p> <p>1 than others. And to be clear -- we're calling</p> <p>2 it Payday, short term, I'm using the terms</p> <p>3 that you're using, we would seek advice of</p> <p>4 counsel.</p> <p>5 When I say, we, the company,</p> <p>6 Brad. We were buying products that would be</p> <p>7 considered -- or choice of law contracts</p> <p>8 provisions.</p> <p>9 MR. DAUGHERTY: I need to</p> <p>10 interject. Tyler, I want you to answer Mr.</p> <p>11 Ackelsberg's question, but would just ask you</p> <p>12 not to divulge the contents of any advice you</p> <p>13 received from the company's counsel either at</p> <p>14 the time or presently.</p> <p>15 BY MR. ACKELSBURG:</p> <p>16 Q. Let's stick with -- just to be</p> <p>17 consistent, we'll stick with the 2012 --</p> <p>18 roughly 2012, just before you became vice</p> <p>19 president of operations. Were you aware of</p> <p>20 any states in which Brad would not -- would</p> <p>21 not buy loans, these kinds of loans.</p> <p>22 When I say loans, we're</p> <p>23 talking about the high rate Payday</p> <p>24 installment, various online products that</p>

<p style="text-align: right;">Page 41</p> <p>1 we've been describing. Were there states that</p> <p>2 you knew Brad didn't want to be operating in?</p> <p>3 A. I can't say from a time standpoint, but</p> <p>4 from 2012, you know, roughly in that general</p> <p>5 ballpark, there was beginning to be states</p> <p>6 that he didn't want to purchase specific</p> <p>7 products in.</p> <p>8 Q. You don't remember what states they</p> <p>9 were?</p> <p>10 A. I don't remember exactly, you know, what</p> <p>11 states, there were some. It was a volume</p> <p>12 thing, as well as just a concern, a regulatory</p> <p>13 concern.</p> <p>14 Q. Let me ask what you mean by a volume</p> <p>15 thing. Why don't you explain what that means?</p> <p>16 A. Maybe it's a state that you buy 1,000</p> <p>17 accounts and 1,000 consumers, and I charge off</p> <p>18 filed it. Maybe there's a state that is</p> <p>19 small, you know, like five or six accounts</p> <p>20 that, you know, the perceived risk associated</p> <p>21 with those accounts may not be worth buying.</p> <p>22 So we would ask for those to be held out.</p> <p>23 Q. When you say perceived risk, meaning</p> <p>24 regulatory risk, right? In other words, like</p>	<p style="text-align: right;">Page 43</p> <p>1 Pennsylvania?</p> <p>2 MR. DAUGHERTY: I'll object</p> <p>3 on the grounds --</p> <p>4 BY MR. ACKELSBURG:</p> <p>5 Q. Other than discussions with counsel.</p> <p>6 A. I can't say that I was, you know,</p> <p>7 involved in any of those discussions as far as</p> <p>8 Pennsylvania, you know, is concerned. I do</p> <p>9 believe that there were discussions being had,</p> <p>10 obviously with counsel, as well as internally.</p> <p>11 Q. What about conversations you might have</p> <p>12 had with Brad? He's the CEO. Let's say, it's</p> <p>13 now 2013, you're vice president of operations.</p> <p>14 Do you recall any conversation with Brad about</p> <p>15 operations in Pennsylvania? And this is</p> <p>16 really up until the time that this suit was</p> <p>17 filed.</p> <p>18 Do you recall -- before this</p> <p>19 suit was filed, do you recall any</p> <p>20 conversations with Brad about operations in</p> <p>21 Pennsylvania?</p> <p>22 A. No. Can I clarify, as well, my</p> <p>23 responsibilities as the vice president of</p> <p>24 operation?</p>
<p style="text-align: right;">Page 42</p> <p>1 an attorney general or a banking department</p> <p>2 giving you grief about collecting loans that</p> <p>3 aren't legal in that state; that's what you're</p> <p>4 talking about, right?</p> <p>5 MR. DAUGHERTY: Object to</p> <p>6 form.</p> <p>7 BY MR. ACKELSBURG:</p> <p>8 Q. That kind of a problem.</p> <p>9 A. Potentially, yes. In some of the areas,</p> <p>10 I don't know that it was known what direction,</p> <p>11 you know, the state was going to, you know, go</p> <p>12 with their opinion of a loan. But the</p> <p>13 decision, you know, in some of those states</p> <p>14 was made to stop buying.</p> <p>15 Q. You know -- I'm going to be moving into</p> <p>16 the Think Finance relationship specifically,</p> <p>17 and it's true that at some point in 2015 you</p> <p>18 stopped -- you stopped collecting Pennsylvania</p> <p>19 loans for -- that you had gotten from Think</p> <p>20 Finance, right?</p> <p>21 A. Yes.</p> <p>22 Q. Before that decision, had you -- do you</p> <p>23 recall any conversations within the company</p> <p>24 about whether or not to operate in</p>	<p style="text-align: right;">Page 44</p> <p>1 Q. Sure.</p> <p>2 A. My focus at that time was really the</p> <p>3 collections from our internal call centers.</p> <p>4 At that point in time we had collectors in</p> <p>5 Hutchinson, as well as our two sites in</p> <p>6 Phoenix. I guess post 2015, we ended up with</p> <p>7 Jamaica.</p> <p>8 My responsibility in what I</p> <p>9 dealt with on a day-to-day basis was the</p> <p>10 performance and day-to-day operation of those</p> <p>11 folks and those call centers.</p> <p>12 Q. Not the purchase of loans?</p> <p>13 A. Not the purchase of loans.</p> <p>14 Q. Nor the decision of what kinds of loans</p> <p>15 to purchase?</p> <p>16 A. Nor that decision.</p> <p>17 Q. Nor the decision as to which states in</p> <p>18 which to operate?</p> <p>19 A. Correct.</p> <p>20 Q. But as the CEO, that became something</p> <p>21 that you were paying close attention to,</p> <p>22 correct?</p> <p>23 A. Correct.</p> <p>24 Q. With regard to the determination of what</p>

<p style="text-align: right;">Page 45</p> <p>1 state in which -- let me ask you this: Is the</p> <p>2 company today still purchasing Payday Loans or</p> <p>3 other forms of high rate online consumer debt?</p> <p>4 MR. DAUGHERTY: Object to</p> <p>5 form.</p> <p>6 THE WITNESS: Yes, we are.</p> <p>7 BY MR. ACKELSBURG:</p> <p>8 Q. Are you purchasing any Pennsylvania</p> <p>9 loans?</p> <p>10 A. No.</p> <p>11 Q. You mentioned -- I assumed that the</p> <p>12 states that you mentioned, New York, Arkansas,</p> <p>13 Connecticut and Maryland, you're not</p> <p>14 purchasing that kind of consumer debt in those</p> <p>15 states either?</p> <p>16 MR. DAUGHERTY: Object to</p> <p>17 form.</p> <p>18 THE WITNESS: That's correct.</p> <p>19 BY MR. ACKELSBURG:</p> <p>20 Q. I think you eluded to some kind of --</p> <p>21 let me ask you this: Did you institute</p> <p>22 enhanced due diligence to make the kind of</p> <p>23 evaluations that you described before, before</p> <p>24 purchasing debt?</p>	<p style="text-align: right;">Page 47</p> <p>1 The approach that I took was,</p> <p>2 you know, we need to make sure we have a</p> <p>3 documented process --</p> <p>4 BY MR. ACKELSBURG:</p> <p>5 Q. I understand.</p> <p>6 A. I want to hold people accountable within</p> <p>7 our organization to a process, as well as</p> <p>8 making sure that evaluations and onboarding of</p> <p>9 new purchases is completed.</p> <p>10 Q. Did you ever ask Brad Hochstein what his</p> <p>11 process was for deciding what loans to buy,</p> <p>12 what states to buy them in?</p> <p>13 A. I can't say that I did.</p> <p>14 Q. All right, I'm going to start showing</p> <p>15 you some documents. And we're going to assign</p> <p>16 numbers to them and we're going to go in</p> <p>17 order, and we're going to start with number 65</p> <p>18 just because there have been other depositions</p> <p>19 before yours. And we're just keeping with the</p> <p>20 same numbers.</p> <p>21 So I'm going to show you a</p> <p>22 document that we pre-marked as exhibit P-65.</p> <p>23 - - -</p> <p>24 (Whereupon Exhibit P-65 was</p>
<p style="text-align: right;">Page 46</p> <p>1 MR. DAUGHERTY: Object to</p> <p>2 form.</p> <p>3 THE WITNESS: Yes. I along</p> <p>4 with, at the time our compliance officer, we</p> <p>5 worked as obviously a team and documented the</p> <p>6 process of onboarding.</p> <p>7 BY MR. ACKELSBURG:</p> <p>8 Q. As you began to do that, and we're</p> <p>9 talking now post November 2016, right, since</p> <p>10 you became the CEO, that's what you're</p> <p>11 describing, right?</p> <p>12 A. Yes.</p> <p>13 Q. What did you discover with regard to any</p> <p>14 prior processes in place during the Brad</p> <p>15 Hochstein error?</p> <p>16 MR. DAUGHERTY: Object to</p> <p>17 form.</p> <p>18 THE WITNESS: I don't know</p> <p>19 that we necessarily discovered anything. I</p> <p>20 think our track record spoke to that there</p> <p>21 were some problems. You know, there was not a</p> <p>22 documented -- he didn't have a documented</p> <p>23 process. That doesn't mean that he didn't</p> <p>24 have a process.</p>	<p style="text-align: right;">Page 48</p> <p>1 marked for identification.)</p> <p>2 - - -</p> <p>3 BY MR. ACKELSBURG:</p> <p>4 Q. For clarity, we're looking at -- Exhibit</p> <p>5 P-65 is a multipage discovery document</p> <p>6 starting with TF-PA 405052. Just so that you</p> <p>7 understand, Mr. Rempel, we're going to be</p> <p>8 showing you some documents that were produced</p> <p>9 in discovery by Think Finance and some that</p> <p>10 were produced by NCA. And if you look in the</p> <p>11 lower right-hand corner, you'll see there's a</p> <p>12 number with TF-PA in front of it. That means</p> <p>13 that it was produced by Think Finance.</p> <p>14 You also will be seeing some</p> <p>15 documents that say NCA-PA, which then means</p> <p>16 that it came from your company. Okay?</p> <p>17 A. Okay.</p> <p>18 Q. All right. Now, this document appears</p> <p>19 to be a -- organizational -- some</p> <p>20 organizational information that National</p> <p>21 Credit Adjusters provided to Think Finance.</p> <p>22 Do you see that? Have you gone through the</p> <p>23 document?</p> <p>24 A. No.</p>

<p style="text-align: right;">Page 49</p> <p>1 Q. Why don't you do that first?</p> <p>2 A. (Witness complies.)</p> <p>3 Q. All right. Have you had a chance to</p> <p>4 look at it?</p> <p>5 A. Yes.</p> <p>6 Q. Have you ever seen this document before,</p> <p>7 anything sort of like this?</p> <p>8 A. I can say that I've seen documents like</p> <p>9 this.</p> <p>10 Q. And it's common, I think you mentioned</p> <p>11 in your testimony that it's common in the</p> <p>12 industry that the credit issuer will be doing</p> <p>13 due diligence on -- some due diligence on the</p> <p>14 debt buyer, and the debt buyer might be doing</p> <p>15 due diligence back in the other direction,</p> <p>16 correct?</p> <p>17 A. Correct.</p> <p>18 Q. So it's not surprising to see that NCA</p> <p>19 produced a detailed organizational chart like</p> <p>20 the one we're looking at for Think Finance?</p> <p>21 MR. DAUGHERTY: Object to</p> <p>22 form.</p> <p>23 BY MR. ACKELSBURG:</p> <p>24 Q. That's to be expected, right?</p>	<p style="text-align: right;">Page 51</p> <p>1 last six years roughly, maybe not that long,</p> <p>2 three years folks from Plain Green would</p> <p>3 actually come in, because that's who we were</p> <p>4 buying from. We haven't bought debt from</p> <p>5 Think Finance, as you know it.</p> <p>6 It has been from the issuers,</p> <p>7 the credit issuers, like originally Think</p> <p>8 Cash, Payday One, over time they stopped</p> <p>9 lending and the due diligence would be done by</p> <p>10 the credit issuer that we buy from, that our</p> <p>11 contract is with.</p> <p>12 Q. Okay, let's talk about the earlier</p> <p>13 period that I think you said was roughly</p> <p>14 through 2013 where Think Finance was, you said</p> <p>15 was doing the onboarding. What do you mean by</p> <p>16 that, doing the onboarding?</p> <p>17 A. The request for, you know, information,</p> <p>18 how we operated, our compliance management, et</p> <p>19 cetera, which really became more prevalent in</p> <p>20 2012, '13 timeframe. I think the industry</p> <p>21 everywhere, if you want to be in it, the</p> <p>22 compliance expectations and compliance</p> <p>23 management systems really improved, increased</p> <p>24 that timeframe.</p>
<p style="text-align: right;">Page 50</p> <p>1 A. To be expected, yes.</p> <p>2 Q. Are you personally aware of any due</p> <p>3 diligence that the company -- any due</p> <p>4 diligence that Think Finance conducted</p> <p>5 regarding NCA before you became CEO?</p> <p>6 A. I am. So the question is, what due</p> <p>7 diligence am I aware of that Think Finance did</p> <p>8 looking into National Credit Adjusters,</p> <p>9 correct?</p> <p>10 Q. Yes, either originally or over the</p> <p>11 course of their relationship.</p> <p>12 A. Over the course of time, I can say that</p> <p>13 early on in the relationship with Think</p> <p>14 Finance, we -- Think Finance was involved from</p> <p>15 a compliance and onboarding standpoint. And</p> <p>16 don't quote me on the ages here, but I want to</p> <p>17 talk -- I'm really talking about 2010, '11,</p> <p>18 '12, '13.</p> <p>19 There is a timeframe where</p> <p>20 the onboarding traditionally was done by Think</p> <p>21 Finance. But from roughly 2013 forward, Think</p> <p>22 Finance relied on the tribes that we purchased</p> <p>23 from, Plain Green, Great Plains, Mobil Loans</p> <p>24 would conduct their own, for example, for the</p>	<p style="text-align: right;">Page 52</p> <p>1 I specifically can't recall</p> <p>2 me being a part of or going through an actual</p> <p>3 packet, you know. We consider onboarding</p> <p>4 packets questionnaires, et cetera, as normal</p> <p>5 today. I'm sure there was one, I just can't</p> <p>6 recall, you know, going through it or being</p> <p>7 part of that.</p> <p>8 Q. So when you talk about onboarding,</p> <p>9 you're really talking about the companies</p> <p>10 learning more detailed information about each</p> <p>11 other? Is that what you're talking about,</p> <p>12 sort of a due diligence? Is that what you</p> <p>13 mean by onboarding?</p> <p>14 A. Yes.</p> <p>15 Q. Okay. So up until 2013, whether we're</p> <p>16 talking about Plain Green or Great Plains</p> <p>17 Lending or Mobil Loans or the earlier</p> <p>18 products, Think Cash; you were primarily</p> <p>19 interacting with Think Finance?</p> <p>20 MR. SHELDON: Object to form.</p> <p>21 BY MR. ACKELSBURG:</p> <p>22 Q. You, I mean NCA was primarily</p> <p>23 interacting with Think Finance?</p> <p>24 MR. SHELDON: Object to form.</p>

<p style="text-align: right;">Page 53</p> <p>1 MR. DAUGHERTY: Object to 2 form. 3 THE WITNESS: Can you clarify 4 your timeframe that you're talking? 5 BY MR. ACKELSBERG: 6 Q. I'm trying to understand -- you said 7 that there was sort of one system where Think 8 Finance was doing the onboarding, you said 9 through roughly 2013, I think you said. And 10 then later it was more directly with the 11 tribes. 12 MR. DAUGHERTY: Object to 13 form. 14 BY MR. ACKELSBERG: 15 Q. I'm just trying to focus on that earlier 16 period and understand what you're saying. 17 A. Understood. I can't honestly answer. I 18 don't know the process or what was happening 19 from an onboarding standpoint. 20 Q. Because you weren't dealing with that 21 part of the business? 22 A. Because I wasn't. What I do recall is 23 when we would have an issuer come on-site, you 24 know, that's part of the due diligence,</p>	<p style="text-align: right;">Page 55</p> <p>1 like it -- that the company is giving its 2 staffing levels at three different locations, 3 correct? 4 A. Yes. 5 Q. Chandler, that's the call center in 6 Arizona, right? 7 A. Yes. 8 Q. And Hutchinson is both the corporate 9 office and the original call center, right? 10 A. Yes. 11 Q. What's Ottawa? 12 A. So Ottawa we no longer have that call 13 center. That was a small collection shop that 14 we indirectly inherited. There was a shop 15 there that we utilized as a third party agency 16 for us, that ultimately got behind on remits, 17 paying us, et cetera. 18 At the time, honestly I can't 19 remember the exact date. It was an 20 opportunity for us to expand from a head count 21 standpoint. This agency owed us money, and so 22 we just worked out a deal to ultimately make 23 this small Ottawa office part of our remote 24 call center setup.</p>
<p style="text-align: right;">Page 54</p> <p>1 sometimes I would be invited to -- whether it 2 be give the tour or discuss, talk about, you 3 know, our collection strategy and just give an 4 update on how we're operating from a policy 5 procedural standpoint. 6 Q. Did you give some tours to Think Finance 7 people? 8 A. I can honestly say that I don't recall, 9 but don't I believe that I gave any tours or 10 sit down in our conference room in Hutchinson, 11 Kansas and spoke to Think Finance directly 12 individually. 13 Q. You weren't the person at NCA 14 responsible for the relationship with Think 15 Finance, correct? 16 A. That's correct. 17 Q. Who would that have been, in the earlier 18 period? 19 A. Brad Hochstein would have been the 20 relationship guy responsible for the 21 relationships of all of our debt purchasing. 22 That was predominantly his responsibility. 23 Q. Let's go back to the exhibit. It looks 24 here that on the first page -- it's looking</p>	<p style="text-align: right;">Page 56</p> <p>1 Q. So it started out as an agency you would 2 outsource business to, work to, but then you 3 ultimately acquired it? 4 A. Yes. 5 Q. Can you tell from the head counts on 6 this exhibit, roughly what year we're looking 7 at? 8 A. I can't. Roughly 2013. I was going to 9 ask you the same question about what year we 10 were looking at, if you know. 11 Q. I don't know. Maybe you can -- you'll 12 be able to get more information from the other 13 pages. 14 A. Sure. 15 Q. The next page is the board of directors, 16 right? 17 A. Yes. 18 Q. Now I didn't ask before -- I didn't 19 think to ask when you were describing your 20 various positions you've held, I didn't 21 realize that you were on the board of 22 directors. When did you join the Board of 23 Directors of NCA? 24 A. It would have been -- I honestly -- I</p>

<p style="text-align: right;">Page 57</p> <p>1 don't know the exact date or year. It would 2 have been prior to 2013. I don't know when 3 the operating agreement was formally amended 4 or changed. I can say that I sat in board 5 meetings dating back to 2010. 6 Q. Remember I asked you previously whether 7 you had -- you could recall any conversations 8 that you had with Brad Hochstein about his 9 criteria for purchasing high rate consumer 10 debt, right? 11 A. Yes. 12 Q. I think your answer was, you couldn't 13 recall any specific conversations, right? 14 A. Right. 15 Q. What about any discussions at the board 16 level from the time that you joined the board; 17 was there ever any discussion about -- let's 18 say about regulatory risk, about what states 19 to operate in? Whether we should be buying 20 Payday Loans from here or from there? 21 Anything like that? Was that a board level 22 discussion? 23 MR. DAUGHERTY: Tyler, please 24 answer Mr. Ackelsberg's question, but omit</p>	<p style="text-align: right;">Page 59</p> <p>1 A. I do remember vaguely discussions about 2 buying from tribes or tribal affiliated 3 issuers. Those discussions I can't remember 4 exactly, you know, what all was said, you 5 know, during those discussions. But it was 6 more about the -- it was just the products 7 themselves, the market. 8 It was starting to become, 9 you know, a lending practice. There was more 10 tribes getting involved in consumer lending, 11 something we hadn't, you know, necessarily 12 seen before. We had opportunities to, you 13 know, purchase it. And sure there was 14 discussions about making that decision and 15 spending the money, I can't speak to 16 discussions that were had at the board level 17 about the compliance approach or the product 18 itself. 19 Q. When you say you can't speak to it, 20 meaning you don't recall hearing any such 21 discussions, right? 22 A. Yes. I mean it was new. 23 Q. So it was a business opportunity, the 24 board was informed about that, but you don't</p>
<p style="text-align: right;">Page 58</p> <p>1 from your answer any advice the board received 2 from its general counsel or any outside 3 attorneys. 4 THE WITNESS: There was 5 discussions. The discussions were primarily 6 held by Brad. You know, the questions from 7 the other board members and owners were really 8 to understand the environment and why it's 9 becoming challenging or why we are seeing the 10 problems, right. 11 BY MR. ACKELSBERG: 12 Q. Before there were any cases filed, I 13 mean you mentioned these states -- they came 14 later, right? 15 A. Right. 16 Q. So before you started getting sued by 17 various states, do you recall it ever being 18 discussed at the board level what state to 19 operate in, with regard to high rate consumer 20 loans? 21 A. I don't recall the conversation. 22 Q. Do you recall any board level 23 discussions about whether to buy from tribal 24 affiliated credit issuers?</p>	<p style="text-align: right;">Page 60</p> <p>1 recall any concerns being expressed by other 2 board members about whether this might be 3 legal or not? 4 A. I can't remember an exact conversation 5 about that. What I can say is from a 6 purchasing standpoint, I know we're talking 7 about the board at this point, Brad really 8 controlled not just the company, but he's the 9 one with 30 years of experience, et cetera. 10 Everybody really looked up to him. 11 Q. So if Brad told the board this is a 12 really exciting business opportunity, it's 13 unlikely the board would challenge him and 14 tell him not to pursue it? 15 MR. DAUGHERTY: Object to 16 form. 17 THE WITNESS: I would say 18 that it's not unlikely, but, you know 19 throughout a discussion -- 20 BY MR. ACKELSBERG: 21 Q. It's not likely or unlikely? 22 A. Can you restate your question? You're 23 getting me confused. 24 Q. Do you recall any -- do you recall any</p>

<p style="text-align: right;">Page 61</p> <p>1 time when the board challenged Brad about any</p> <p>2 of his purchasing decisions?</p> <p>3 A. I can't recall any specific time. I</p> <p>4 know that there was discussions. You know, I</p> <p>5 think that anybody putting their own money in</p> <p>6 is going to have questions. The degree of</p> <p>7 challenge, I can't speak to. But I know there</p> <p>8 was discussions. I apologize, I can't</p> <p>9 remember that far back to exactly what those</p> <p>10 discussions were.</p> <p>11 Q. Looking at the chart, who is Richard</p> <p>12 Smith?</p> <p>13 A. Dick Smith, he's a shareholder.</p> <p>14 Q. So he's an investor in the company?</p> <p>15 A. Yes.</p> <p>16 Q. He's not involved in operations?</p> <p>17 A. No.</p> <p>18 Q. What about Mark Huston?</p> <p>19 A. Shareholder, very passive, very similar</p> <p>20 to Mr. Smith.</p> <p>21 Q. So basically they were supplying capital</p> <p>22 to Mr. Hochstein to purchase the debt?</p> <p>23 A. Yes.</p> <p>24 Q. And Shawn Gylling, G-Y-L-L-I-N-G,</p>	<p style="text-align: right;">Page 63</p> <p>1 way that potential employees were handled.</p> <p>2 Shawn may have been more structured, et</p> <p>3 cetera; Brad may have been less structured.</p> <p>4 Literally, it became a point where there was</p> <p>5 just a lot of bickering. I mean they couldn't</p> <p>6 agree on anything. The direction of the</p> <p>7 organization was being challenged. You know,</p> <p>8 and ultimately all of the way down to the</p> <p>9 collector, people feel that when your</p> <p>10 leadership isn't on the same page.</p> <p>11 BY MR. ACKELSBURG:</p> <p>12 Q. Where -- is Mr. Gylling still in the</p> <p>13 industry, that you know of?</p> <p>14 A. To my knowledge, he is not.</p> <p>15 Q. If you flip the page to the executive</p> <p>16 team, it shows that you reported to Shawn, who</p> <p>17 in turn reported to Brad. Is that the way you</p> <p>18 recall it?</p> <p>19 A. Yes.</p> <p>20 Q. And does that help you understand the</p> <p>21 timeframe?</p> <p>22 A. No, it doesn't.</p> <p>23 Q. That's fine.</p> <p>24 A. Shawn hired me, so I ultimately reported</p>
<p style="text-align: right;">Page 62</p> <p>1 Gylling?</p> <p>2 A. Shawn was our chief operating officer up</p> <p>3 until June of 2016.</p> <p>4 Q. Was he also an investor?</p> <p>5 A. He also did have ownership. I believe</p> <p>6 he started -- he started before I did. I</p> <p>7 don't know what the deal was necessarily on</p> <p>8 how he obtained his ownership, but he was a</p> <p>9 shareholder at the time he was there. When he</p> <p>10 was let go in 2016, the company negotiated a</p> <p>11 buyout.</p> <p>12 Q. Was he fired?</p> <p>13 A. Yes.</p> <p>14 Q. For what?</p> <p>15 A. He -- ultimately Brad and him just were</p> <p>16 not seeing eye to eye on a lot of things.</p> <p>17 Q. Like what, what is the nature of the</p> <p>18 disagreements?</p> <p>19 MR. DAUGHERTY: Object to the</p> <p>20 question on the grounds that it's beyond the</p> <p>21 scope of the deposition notice. You can</p> <p>22 answer.</p> <p>23 THE WITNESS: It really got</p> <p>24 to a point about anything and everything, the</p>	<p style="text-align: right;">Page 64</p> <p>1 to him throughout my tenure.</p> <p>2 Q. Look -- flip to page entitled NCA</p> <p>3 Operations. There's a reference to a director</p> <p>4 of analytics. Do you see that?</p> <p>5 A. Yes. 405055, just making sure we're on</p> <p>6 the same page.</p> <p>7 Q. Yes.</p> <p>8 A. Okay, yes.</p> <p>9 Q. Is Mr. Mahoney still employed as</p> <p>10 director of analytics?</p> <p>11 A. Yes.</p> <p>12 Q. And what does the director of analytics</p> <p>13 do?</p> <p>14 A. He's responsible for really the</p> <p>15 development of a lot of reporting functions</p> <p>16 that we have from an operational standpoint,</p> <p>17 you know, liquidation reporting down to</p> <p>18 collector level evaluations, metrics. He</p> <p>19 would be somebody that today is used for</p> <p>20 helping identify the right price to pay for,</p> <p>21 you know, a potential purchase, as well as</p> <p>22 providing, you know, finance to our accounting</p> <p>23 department with our performance or accretion</p> <p>24 curves.</p>

<p style="text-align: right;">Page 65</p> <p>1 Q. What does that mean?</p> <p>2 A. GAP requires us, which I just learned</p> <p>3 that may be changing, to utilize a method of</p> <p>4 accretive accounting. Ultimately you project</p> <p>5 out what you expect to collect over the</p> <p>6 lifetime of that portfolio. And it's</p> <p>7 ultimately a way to recognize revenue.</p> <p>8 Q. In the consumer loan -- the kind of</p> <p>9 consumer loans that we've been talking about,</p> <p>10 is there a working -- based on the data that</p> <p>11 you generate through your analytics</p> <p>12 department, do you have an expectation of how</p> <p>13 long you need to work an account to start to</p> <p>14 make money?</p> <p>15 A. An expectation of how long to work a</p> <p>16 single account?</p> <p>17 Q. A portfolio.</p> <p>18 A. A portfolio. Okay.</p> <p>19 Q. That's the way you look at it is</p> <p>20 portfolio, right?</p> <p>21 A. Yes, the purchase. Yeah, we have an</p> <p>22 expectation. You know, that expectations can</p> <p>23 change over time based on the cost to operate</p> <p>24 rate, and you know, the cost you pay for it is</p>	<p style="text-align: right;">Page 67</p> <p>1 Q. Parallel -- next to -- on this same</p> <p>2 chart next to the director of analytics is a</p> <p>3 legal manager, Kevin Emmerich. Is Kevin</p> <p>4 Emmerich still with the company?</p> <p>5 A. No.</p> <p>6 Q. Was he let go also?</p> <p>7 A. He was let go.</p> <p>8 Q. By you or by Brad?</p> <p>9 A. By me.</p> <p>10 Q. Why?</p> <p>11 A. He was --</p> <p>12 MR. DAUGHERTY: I'll object</p> <p>13 on the grounds that it's outside the scope of</p> <p>14 the deposition notice. You can answer.</p> <p>15 THE WITNESS: I'm happy to</p> <p>16 answer it. He was part of a layoff here in</p> <p>17 January of this year.</p> <p>18 BY MR. ACKELSBURG:</p> <p>19 Q. His title on this chart is legal</p> <p>20 manager. He's not a lawyer, right?</p> <p>21 A. No.</p> <p>22 Q. What does a non-lawyer legal manager</p> <p>23 mean? Is that like a paralegal?</p> <p>24 A. I honestly can't answer what that means</p>
<p style="text-align: right;">Page 66</p> <p>1 the cost you pay for it. That's your</p> <p>2 investment.</p> <p>3 So performance as well as the</p> <p>4 cost to operate changes. But we have an</p> <p>5 expected return, ROI, like anybody would from</p> <p>6 an investment perspective. Does that answer</p> <p>7 your question?</p> <p>8 Q. Yeah, I'm just curious about in this</p> <p>9 area of high rate consumer debt, are you</p> <p>10 generally going to be looking at a profit</p> <p>11 after six months, after 12 months? How long</p> <p>12 do you need to work an account like this in</p> <p>13 order to start seeing profit.</p> <p>14 MR. DAUGHERTY: Object to</p> <p>15 form.</p> <p>16 THE WITNESS: Well, it really</p> <p>17 depends on what you initially paid for it.</p> <p>18 Let's make an assumption, I guess, that we</p> <p>19 paid a price that should allow us to reach a</p> <p>20 return. On average we looked to get our</p> <p>21 investment back in 18 to 24 months, which is</p> <p>22 pretty standard for the average balances that</p> <p>23 we purchase.</p> <p>24 BY MR. ACKELSBURG:</p>	<p style="text-align: right;">Page 68</p> <p>1 or why the title is legal manager. I can</p> <p>2 speak to what he actually did.</p> <p>3 Q. Okay, what did he do. I'm asking about</p> <p>4 him, because he actually appears on a number</p> <p>5 of the documents with Think Finance. What was</p> <p>6 his job?</p> <p>7 A. Sure. He worked underneath -- this says</p> <p>8 Shawn Gylling, but I feel like he spent more</p> <p>9 time with Brad over the years. He'd be the</p> <p>10 one to coordinate the contracts, draft the</p> <p>11 contracts; not draft the contracts, review the</p> <p>12 contracts on a forward flow basis or</p> <p>13 purchasing basis each month or maybe an annex,</p> <p>14 et cetera.</p> <p>15 His responsibility was to</p> <p>16 review those, read those, provide them to Brad</p> <p>17 with any, you know, thoughts that he had. And</p> <p>18 then I believe he executed some of those.</p> <p>19 I also -- he handled some, he</p> <p>20 was previously -- he has been in the industry</p> <p>21 a long time. He oversaw early, early on</p> <p>22 that's probably why it's a legal manager here.</p> <p>23 There's a team of collectors very early on</p> <p>24 that they were performing legal collections.</p>

<p style="text-align: right;">Page 69</p> <p>1 So accounts that would be</p> <p>2 suit eligible, this team -- often times in</p> <p>3 call centers it's called the legal team, where</p> <p>4 they make phone calls to the consumer, inform</p> <p>5 the consumer that the company has been unable</p> <p>6 to recover or collect the debt. And at that</p> <p>7 point in time it would be referred to an</p> <p>8 attorney in their state to pursue recovery,</p> <p>9 just to clarify that.</p> <p>10 BY MR. ACKELSBURG:</p> <p>11 Q. On the chart under you, under operations</p> <p>12 is a person who has the title dial manager.</p> <p>13 What does that mean?</p> <p>14 A. Ken Newberg, the dialer manager is</p> <p>15 responsible for -- we utilize predictive</p> <p>16 dialers to make our outbound phone calls. He</p> <p>17 would be the one that would actually build the</p> <p>18 campaign within the dialer, launch the</p> <p>19 campaign, make sure that the campaign is --</p> <p>20 the dialer is running at an optimal rate.</p> <p>21 For example, making sure</p> <p>22 collectors wait times -- a wait time would be</p> <p>23 a collector gets off one phone call, documents</p> <p>24 the account and moves, you know, back into an</p>	<p style="text-align: right;">Page 71</p> <p>1 an automated dialer is different from the</p> <p>2 product that we use. So I want to be careful.</p> <p>3 Q. I'm sorry, I'm not really --</p> <p>4 A. I understand that.</p> <p>5 Q. I'm not talking -- I wasn't trying to</p> <p>6 make a legally sound --</p> <p>7 A. Understood.</p> <p>8 Q. -- distinction there. Okay. Flip two</p> <p>9 more pages, there's something that says NCA</p> <p>10 compliance. There's a compliance officer and</p> <p>11 it says that she reports to the board of</p> <p>12 directors. Would it be more accurate to say</p> <p>13 that she reported to Brad too?</p> <p>14 MR. DAUGHERTY: Object to</p> <p>15 form.</p> <p>16 THE WITNESS: I would say she</p> <p>17 -- to be more accurate, she reported on paper</p> <p>18 to board of directors. She would come in and</p> <p>19 go through complaint logs, et cetera, you</p> <p>20 know, with the board. I can't answer whether</p> <p>21 it whether it would be fair to say that she</p> <p>22 reported to Brad?</p> <p>23 Q. That's fine. But you do remember her</p> <p>24 coming?</p>
<p style="text-align: right;">Page 70</p> <p>1 available status within the dialer so they can</p> <p>2 receive another call.</p> <p>3 Q. So we're talking about outbound calls</p> <p>4 that are being done in some automated fashion?</p> <p>5 A. The predictive fashion is what I would</p> <p>6 consider it.</p> <p>7 Q. What does that mean?</p> <p>8 A. A predictive dialer, the way it</p> <p>9 functions is, it's predicting, based on your</p> <p>10 head counts, the average talk time for each</p> <p>11 collector, et cetera, you know, how many lines</p> <p>12 to ultimately dial out on.</p> <p>13 And the predictive part of it</p> <p>14 is to make sure you're not over dialing or</p> <p>15 whatnot and you have consumers that nobody is</p> <p>16 available to manage them. It's a hosted</p> <p>17 solution.</p> <p>18 Q. And the actual calling is done by some</p> <p>19 automated system?</p> <p>20 A. Yeah, it's from an outbound dialer</p> <p>21 platform. When you say automated --</p> <p>22 Q. A computer.</p> <p>23 A. So in the line of TC-PA, et cetera,</p> <p>24 there is a very, you know, the definitions of</p>	<p style="text-align: right;">Page 72</p> <p>1 A. Yes.</p> <p>2 Q. So her job was to bring complaints to</p> <p>3 the attention of the board?</p> <p>4 A. Complaints --</p> <p>5 Q. When we're talking about complaints, are</p> <p>6 we talking about consumer complaints?</p> <p>7 A. Yeah, Lori, as a compliance officer, the</p> <p>8 complaints that she would typically handle and</p> <p>9 bring to the board were more along the lines</p> <p>10 of consumer complaints. If it was a</p> <p>11 regulatory complaint or a matter, we would</p> <p>12 typically receive an update by our internal</p> <p>13 counsel.</p> <p>14 Q. There is something called a compliance</p> <p>15 board and something called a policy and</p> <p>16 procedure review board. Are you familiar with</p> <p>17 those entities?</p> <p>18 A. Yes.</p> <p>19 Q. Could you explain what they are?</p> <p>20 A. So the compliance board was made up of</p> <p>21 it shows here -- the purpose of it was if we</p> <p>22 received a complaint, whether it be written or</p> <p>23 oral on a collector, that complaint needed not</p> <p>24 only to be reviewed by our auditors, but we</p>

<p style="text-align: right;">Page 73</p> <p>1 also wanted a group that would listen to the</p> <p>2 call in a senior position and make</p> <p>3 recommendations based on, you know, that</p> <p>4 collector or employee I should say, whether it</p> <p>5 be punishment or write-ups, termination, et</p> <p>6 cetera. It was our way of --</p> <p>7 Q. Keeping an eye on the collectors?</p> <p>8 A. Not just keeping an eye on the</p> <p>9 collectors, but making sure that the</p> <p>10 collectors believed that, you know, it wasn't</p> <p>11 just one person ultimately making a decision</p> <p>12 on the fate of their job, right. That's what</p> <p>13 the compliance board was designed and still</p> <p>14 does.</p> <p>15 The second part of your</p> <p>16 question, as far as policy and procedures,</p> <p>17 review board, that was created initially to</p> <p>18 review the drafted policies, collection</p> <p>19 policies and procedures of our company.</p> <p>20 Q. Okay. I'm going to show you another</p> <p>21 document --</p> <p>22 MR. DAUGHERTY: Irv, if</p> <p>23 you're ready to move on to another document,</p> <p>24 we've gone for about 90 minutes. It might be</p>	<p style="text-align: right;">Page 75</p> <p>1 That's correct, as far as you know?</p> <p>2 A. Yes.</p> <p>3 Q. Okay. And then there's reference to</p> <p>4 another entity, Level Financial LLC, which</p> <p>5 says, according to this document, that it was</p> <p>6 created as a special purpose entity of NCA in</p> <p>7 early 2014 to operate solely as the debt</p> <p>8 buying entity for current and future</p> <p>9 agreements. Do you see that?</p> <p>10 A. Yes. Do you mind if I read through this</p> <p>11 real quick?</p> <p>12 Q. Absolutely, sure. Take whatever time</p> <p>13 you need.</p> <p>14 A. Okay, thank you.</p> <p>15 Q. Okay.</p> <p>16 A. Are we just going to be speaking</p> <p>17 about --</p> <p>18 Q. I think so, yeah. You can look at the</p> <p>19 next page, too.</p> <p>20 A. Okay.</p> <p>21 Q. So we're just asking you about Level</p> <p>22 Financial. There's a description of what</p> <p>23 Level Financial is. I gather it's an</p> <p>24 affiliated company?</p>
<p style="text-align: right;">Page 74</p> <p>1 a good time for a break.</p> <p>2 VIDEOTAPE OPERATOR: That</p> <p>3 concludes DVD number one, the time is 10:45.</p> <p>4 We're off the record.</p> <p>5 - - -</p> <p>6 (Whereupon Exhibit P-66 was</p> <p>7 marked for identification.)</p> <p>8 - - -</p> <p>9 VIDEOTAPE OPERATOR: This begins</p> <p>10 DVD number two, 10:50 p.m. We're on the</p> <p>11 record.</p> <p>12 BY MR. ACKELSBURG:</p> <p>13 Q. Mr. Rempel, I've given you another</p> <p>14 document that we've marked P-66. This, I</p> <p>15 believe, is another of the due diligence</p> <p>16 documents about NCA that we got from Think</p> <p>17 Finance. And if you can turn to the second</p> <p>18 page of the document, there is under financial</p> <p>19 review it just gives some information about</p> <p>20 the company. And I want to just get you to</p> <p>21 confirm it.</p> <p>22 So under overview of NCA, it</p> <p>23 says that the company was founded in 2001</p> <p>24 privately held and privately capitalized.</p>	<p style="text-align: right;">Page 76</p> <p>1 A. Is that a question.</p> <p>2 Q. Yes, that's a company affiliated with</p> <p>3 NCA, right?</p> <p>4 A. Yes, it's actually -- exactly what it's</p> <p>5 listed as, a special purpose entity, the</p> <p>6 purpose of that was really -- that was the</p> <p>7 time that we started utilizing capital</p> <p>8 provided by an outside lender. Flock</p> <p>9 Financial is a group that --</p> <p>10 Q. Spell that again?</p> <p>11 A. Flock, F-L-O-C-K.</p> <p>12 Q. Flock Financial?</p> <p>13 A. Yes.</p> <p>14 Q. That's the company that was providing</p> <p>15 the financing starting in 2014 or so?</p> <p>16 A. Yes. I don't know that they were</p> <p>17 financing every purchase, but the purpose of</p> <p>18 Level was -- as a special purpose entity, was</p> <p>19 for protection, asset protection of what they</p> <p>20 were funding. You know, they were</p> <p>21 collateralized by those purchases and they</p> <p>22 didn't want them intertwined with other</p> <p>23 purchases that NCA may have been making that</p> <p>24 they were not funding et cetera.</p>

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<p>1 It was really a protection</p> <p>2 from them from a collateral perspective.</p> <p>3 Q. And then in the next category it says:</p> <p>4 Ownership structure, and this provides the</p> <p>5 percentage of ownership at this point in time.</p> <p>6 Is this something you're familiar with, these</p> <p>7 percentages?</p> <p>8 A. Yes.</p> <p>9 Q. This looks to be accurate?</p> <p>10 A. Yes.</p> <p>11 Q. So Brad was not only the CEO, but he was</p> <p>12 the majority shareholder? Not the</p> <p>13 shareholder, he had the biggest -- he had 37.6</p> <p>14 percent of ownership?</p> <p>15 A. Yes.</p> <p>16 Q. All right. And then you've already</p> <p>17 described the executive team, the employees.</p> <p>18 Let's look at the next page under active</p> <p>19 inventory. Does this -- are these numbers</p> <p>20 that you're familiar with?</p> <p>21 A. I can say that they look like --</p> <p>22 Q. -- in the ball park?</p> <p>23 A. In the ball park. I mean you're asking</p> <p>24 a question from 2013 of a lot of different</p>	<p>1 would place our accounts out with -- and they</p> <p>2 would work them as a third party contractual</p> <p>3 relationship.</p> <p>4 Q. So in that case, in that kind of a</p> <p>5 situation, NCA would be the owner of the debt,</p> <p>6 and the agency would then be the direct</p> <p>7 collector?</p> <p>8 A. Yes.</p> <p>9 Q. In that kind of an arrangement, would</p> <p>10 they collect in the name of NCA?</p> <p>11 A. No, they would collect in the name of</p> <p>12 their agency. They would inform the consumer</p> <p>13 that NCA was the owner of the debt.</p> <p>14 Q. So when a subagency made a call to a</p> <p>15 Pennsylvania consumer about an account that</p> <p>16 NCA purchased from one of -- from let's say it</p> <p>17 was a loan that was connected to Think Finance</p> <p>18 in some fashion, the subagency making the call</p> <p>19 would tell the consumer that this is the</p> <p>20 agency calling and we're working an account, a</p> <p>21 debt that you owe to NCA?</p> <p>22 MR. DAUGHERTY: Object to</p> <p>23 form.</p> <p>24 THE WITNESS: Something in</p>
Page 78	Page 80
<p>1 accounts. I can't say that I know them to be</p> <p>2 100 percent accurate, but they're --</p> <p>3 Q. Sure, I understand.</p> <p>4 A. But it looks like a good representation.</p> <p>5 Q. When you talked before about the high</p> <p>6 rate consumer loans being 50 percent or more</p> <p>7 of the inventory, it would be 50 percent or</p> <p>8 more of these numbers here that we're looking</p> <p>9 at?</p> <p>10 MR. DAUGHERTY: Object to</p> <p>11 form.</p> <p>12 THE WITNESS: I don't know</p> <p>13 that to be 100 percent true, but I also</p> <p>14 don't -- that could be accurate. I just don't</p> <p>15 know at that time.</p> <p>16 BY MR. ACKELSBURG:</p> <p>17 Q. Okay, that's fine.</p> <p>18 A. We had a fair amount volume of short</p> <p>19 term loans, you know, internet based loans is</p> <p>20 the way I describe them. You're describing</p> <p>21 them as high rate interest loans.</p> <p>22 Q. There's a category of subagencies. What</p> <p>23 are subagencies?</p> <p>24 A. Those are agencies that would -- we</p>	<p>1 that nature. They need to educate the</p> <p>2 consumer on how that account got to their</p> <p>3 agency and the relationship they had with NCA,</p> <p>4 and NCA is owning the title of that debt.</p> <p>5 BY MR. ACKELSBURG:</p> <p>6 Q. Let's look at another document. Now</p> <p>7 we're going to start looking specifically at</p> <p>8 the relationship with Think Finance.</p> <p>9 - - -</p> <p>10 (Whereupon Exhibit P-67 was</p> <p>11 marked for identification.)</p> <p>12 - - -</p> <p>13 BY MR. ACKELSBURG:</p> <p>14 Q. This document you can see we actually</p> <p>15 got from NCA. You see that in the lower</p> <p>16 right-hand corner. Okay?</p> <p>17 A. Okay.</p> <p>18 Q. It appears to originate, so this is like</p> <p>19 four e-mails in a chain and you're familiar</p> <p>20 how that works, right, where you're printing</p> <p>21 out an e-mail chain?</p> <p>22 A. Yes.</p> <p>23 Q. Okay. So it looks like the first e-mail</p> <p>24 message is from someone named Phil Durham at</p>

<p style="text-align: right;">Page 81</p> <p>1 Think Finance, and he's communicating with 2 Brad Hochstein, right? Do you see that? 3 A. Yes. 4 Q. And it's a cc to someone named Brett 5 Horrocks. It appears to be an initial contact 6 about placing some debt. Do you see that? 7 A. I see, yes, that Brett Horrocks was cc'd 8 on it and it was a discussion about placing or 9 selling debt, yes. 10 Q. Well, and also you'll see that Mr. 11 Durham -- it also tells Brad that Think 12 Finance is contracted with a company named 13 Sourceit One, to handle the sale. Do you see 14 that? 15 A. Yes. 16 Q. And that's who Brett Horrocks is, 17 Sourceit One, right? 18 MR. DAUGHERTY: Object to 19 form. 20 THE WITNESS: Yes, I know him 21 to be a affiliated with Sourceit One, yes. 22 BY MR. ACKELSBURG: 23 Q. So it looks like, first of all it looks 24 like this is the beginning of the relationship</p>	<p style="text-align: right;">Page 83</p> <p>1 One has been contracted to handle the sale and 2 placement of Think Finance write offs, do you 3 see that? 4 A. Yes. 5 Q. And he also talks specifically about the 6 deal that is being contemplated. He 7 specifically talks about 80 million dollars 8 worth of Payday Loans and 80 million dollars 9 worth of installment loans, right? That's 10 what it says? 11 A. That's what the e-mail says, yes. 12 Q. To be funded by December 1st, 2010. And 13 he also makes reference to a forward flow 14 beginning in December, right? 15 A. Yes. 16 Q. So let me make sure I understand, based 17 on your description before, of what a forward 18 flow agreement is, you're being presented with 19 the possibility of buying a portfolio right 20 now in December, but also establishing an 21 ongoing relationship for a period of time 22 where periodically there would be future 23 purchases based on an agreed upon price of 24 these kinds of loans?</p>
<p style="text-align: right;">Page 82</p> <p>1 with Think Finance, correct? 2 MR. DAUGHERTY: Object to 3 form. 4 BY MR. ACKELSBURG: 5 Q. That's what it looks like? 6 A. From a general timing standpoint, yes. 7 And the first e-mail in the chain, I would 8 lean in that direction, yes. 9 Q. All right. And then you see there is 10 also a follow up e-mail from Brett Horrocks to 11 Brad Hochstein confirming that he is 12 representing Think Finance. Basically he is 13 the broker in this proposed transaction. 14 MR. DAUGHERTY: Object to 15 form. 16 BY MR. ACKELSBURG: 17 Q. Do you see that? 18 A. Can you restate the question? You were 19 just walking me through this document. 20 Q. Sure. Look at the second e-mail in the 21 chain. 22 A. Okay, from Brett Horrocks. 23 Q. Right. And he's confirming to Brett -- 24 to Brad Hochstein that his company Sourceit</p>	<p style="text-align: right;">Page 84</p> <p>1 MR. DAUGHERTY: Object to 2 form. 3 THE WITNESS: Yes. 4 BY MR. ACKELSBURG: 5 Q. Do you know Brett Horrocks? 6 A. Yes. 7 Q. Who is he? 8 A. He is -- initially as this e-mail 9 states, he brought the opportunity to buy in 10 the very beginning Think Cash and Payday One 11 to NCA, you know, as a broker. At that point 12 in time, we, as the e-mail states, understood 13 that he was contracted or hired to represent 14 Think Finance, you know, and navigate through 15 the market of debt sales. 16 Q. In your world, within this industry, is 17 it common for creditors to approach potential 18 debt buyers through a broker? 19 A. Yes, very common. 20 Q. Why is it done that way, do you know? 21 A. I can't speak for the issuers. I can 22 make an assumption that it's to bring in 23 expertise of the market, as well as folks that 24 may have access to a larger network of</p>

<p style="text-align: right;">Page 85</p> <p>1 potential buyers. And that's just me making</p> <p>2 an assumption on why the issuers would use a</p> <p>3 broker. It takes time to build that network</p> <p>4 up. So...</p> <p>5 Q. Do you know Brett Horrocks from any</p> <p>6 other capacity, other than him being a broker?</p> <p>7 A. As stated before, and what I'm seeing in</p> <p>8 this e-mail chain, I've known that he works</p> <p>9 the 0 to 60 day, I believe, charge offs for,</p> <p>10 at that time, the -- I believe the Think Cash,</p> <p>11 the Payday One. Don't quote me on that.</p> <p>12 But today I believe that he's</p> <p>13 managing the early charge offs for Plain Green</p> <p>14 or Great Plains. I don't know who he's</p> <p>15 managing it for today. I know that he was</p> <p>16 working the accounts before we would buy them.</p> <p>17 So I know that he was --</p> <p>18 Q. He's involved in some fashion in the</p> <p>19 collection of these loans --</p> <p>20 A. Yes, yes.</p> <p>21 Q. -- before the charge offs would be sold</p> <p>22 to NCA?</p> <p>23 A. Yes. As the e-mail states, I knew that</p> <p>24 he was representing himself, as well as</p>	<p style="text-align: right;">Page 87</p> <p>1 MR. DAUGHERTY: Object to</p> <p>2 form.</p> <p>3 THE WITNESS: Yes, other</p> <p>4 internet based online lenders.</p> <p>5 BY MR. ACKELSBURG:</p> <p>6 Q. Would you view Horrocks as kind of a</p> <p>7 specialized intermediary between NCA and the</p> <p>8 issuers in this particular area of the</p> <p>9 consumer credit market?</p> <p>10 A. I guess you could say that. I don't</p> <p>11 know that I view him that way. I've never</p> <p>12 thought of it from that context.</p> <p>13 Q. What other customers has Brett Horrocks</p> <p>14 brokered -- what other Payday lenders or</p> <p>15 online consumer lenders that NCA is buying</p> <p>16 debt from -- I'm tripping over my question</p> <p>17 here. But other than -- you're also</p> <p>18 collecting -- you're also buying, Think</p> <p>19 Finance isn't the only issuer of -- isn't the</p> <p>20 only source of let's say tribal loans that you</p> <p>21 have dealt with, right.</p> <p>22 MR. DAUGHERTY: Object to</p> <p>23 form.</p> <p>24 THE WITNESS: We bought other</p>
<p style="text-align: right;">Page 86</p> <p>1 helping Think Cash, Think Finance wade through</p> <p>2 the relationship with us.</p> <p>3 Q. Do you know, I realize you had a</p> <p>4 different position back in 2010, but let me</p> <p>5 ask you this: When did you first come to know</p> <p>6 Brett Horrocks?</p> <p>7 A. I can't say exactly when. It was early</p> <p>8 on in the relationship, simply as we were</p> <p>9 getting ready to potentially buy a large</p> <p>10 volume. And that was going to impact our</p> <p>11 staffing, et cetera. And so getting an</p> <p>12 understanding and knowing that he had</p> <p>13 knowledge of the products, if you will, I do</p> <p>14 believe I met him early on to simply</p> <p>15 understand the products as well as future</p> <p>16 volumes, and his experiences with the 0 to 60</p> <p>17 days on the collections to better prepare for</p> <p>18 my collection group.</p> <p>19 Q. Has Mr. Horrocks brokered other debt</p> <p>20 purchase relationships with NCA, other than</p> <p>21 Think Finance?</p> <p>22 A. Yes.</p> <p>23 Q. Other than other Payday lenders or</p> <p>24 online lenders?</p>	<p style="text-align: right;">Page 88</p> <p>1 tribal loans, yes, over time.</p> <p>2 BY MR. ACKELSBURG:</p> <p>3 Q. Did Brett Horrocks broker any of those?</p> <p>4 A. No.</p> <p>5 Q. So based on your understanding of the</p> <p>6 industry and how these broker relationships</p> <p>7 work, it would have been the company's, NCA's</p> <p>8 expectation that Think was paying Mr. Horrocks</p> <p>9 to act as its representative in dealing with</p> <p>10 NCA?</p> <p>11 MR. DAUGHERTY: Object to</p> <p>12 form.</p> <p>13 THE WITNESS: I think that</p> <p>14 would be a fair assumption, yes. I don't know</p> <p>15 who works for nothing anymore.</p> <p>16 BY MR. ACKELSBURG:</p> <p>17 Q. Let's go to the next --</p> <p>18 A. Am I to just be stacking these up here?</p> <p>19 Q. Yeah, that would be fine.</p> <p>20 - - -</p> <p>21 (Whereupon Exhibit P-68 was</p> <p>22 marked for identification.)</p> <p>23 - - -</p> <p>24 BY MR. ACKELSBURG:</p>

<p style="text-align: right;">Page 89</p> <p>1 Q. In Exhibit 68, you see there is a 2 transmittal -- there's a transmittal e-mail. 3 So this appears to be at the point where that 4 transaction with -- that initial transaction 5 with -- between Think Finance and NCA is 6 beginning to happen, correct? 7 A. Yeah, it looks to me like an e-mail 8 chain of that representing somewhat 9 negotiations, I guess. 10 Q. Horrocks says -- Horrocks says to 11 Hochstein that -- it says, if you look on the 12 second page, the e-mail of November 18th, 13 2010, it says: Where are we on this and each 14 of the segments of the warehouse? What does 15 that mean? 16 A. Typically when a lender hasn't sold, 17 they're still charging off the accounts. And 18 if they're not placing them in an agency or 19 selling them, they call it a warehouse. They 20 just keep stacking up charged off debts and 21 the amounts just keep growing. The age of 22 them keeps getting older, et cetera. It's 23 just a generic term. 24 Q. I take it from these charts on the</p>	<p style="text-align: right;">Page 91</p> <p>1 marked for identification.) 2 - - - 3 BY MR. ACKELSBURG: 4 Q. It's a transmittal and an agreement. 5 These don't have -- aren't stapled, beware. 6 So we're looking at Exhibit P-69 is NCA-PA 315 7 and then the attachment is 341. 8 So even though Brad -- even 9 though NCA understood that Brad was 10 representing Think Finance coming forward with 11 these loans, it looks like the installment 12 loans, the named seller was going to be First 13 Bank of Delaware. Do you see that? 14 MR. DAUGHERTY: Object to 15 form. 16 THE WITNESS: You're speaking 17 about Brett, you said Brad. 18 BY MR. ACKELSBURG: 19 Q. I meant Brett. I'm sorry, you're right. 20 This started a few months earlier. Brett 21 says: I'm here to talk about selling some 22 Think Finance debt, some of it's Payday, some 23 of it is installment, about 80 million of 24 each. That's how this started?</p>
<p style="text-align: right;">Page 90</p> <p>1 exhibit, that the older the debt, the less 2 valuable price it gets in a purchase? 3 A. Correct. 4 Q. That seems to be common sense. Yeah. 5 Okay. Do you see up at the top, the last 6 e-mail is from Brad to Shawn with a cc to you 7 that says: Mentions when Brad expects to be 8 getting the loans, and then he says: We need 9 to talk strategy on this. What would that 10 mean? Would that be about staffing? 11 A. I don't know what he was thinking at the 12 time that he wrote it. But generically I 13 would -- we would talk as a group at that 14 time, just about how we were going to approach 15 the product. It could be staffing, they are 16 calling it strategy. 17 This was a fairly large 18 volume of accounts and just making sure that 19 everybody is on the same page with what's 20 coming in and the information needed to put 21 this into our daily collection strategy. 22 Q. Let me go to another document, 69. 23 - - - 24 (Whereupon Exhibit P-69 was</p>	<p style="text-align: right;">Page 92</p> <p>1 MR. SHELDON: Object to form. 2 MR. DAUGHERTY: Object to 3 form. 4 BY MR. ACKELSBURG: 5 Q. Here we have, what I believe to be the 6 sale agreement for the installment loans, 7 correct? That's what we're looking at? 8 A. Yes. 9 Q. And in this kind of an arrangement where 10 the name of the creditor is different than 11 the -- strike that question. 12 Based on your understanding 13 of the industry and how these kinds of -- and 14 the company and how these transactions work, 15 it would appear that this contract with First 16 Bank of Delaware was being delivered by Brett 17 Horrocks, Think Finance's broker? 18 MR. SHELDON: Object to form. 19 MR. DAUGHERTY: Object to 20 form. 21 BY MR. ACKELSBURG: 22 Q. Correct? 23 A. This is an attachment from this e-mail? 24 Q. Uh-huh.</p>

<p style="text-align: right;">Page 93</p> <p>1 MR. DAUGHERTY: For the</p> <p>2 record, it appears to me, at least, that we</p> <p>3 have one of the two attachments mentioned in</p> <p>4 the e-mail.</p> <p>5 MR. ACKELSBERG: Right, and I</p> <p>6 didn't include the Payday One because I</p> <p>7 thought that would just muck up the record.</p> <p>8 Since we're focusing on the installment loans,</p> <p>9 I thought it would be --</p> <p>10 MR. DAUGHERTY: Understood.</p> <p>11 I just want it to be clear. We have the</p> <p>12 second attachment mentioned in the e-mail --</p> <p>13 MR. ACKELSBERG: That's</p> <p>14 correct, but not the first attachment.</p> <p>15 MR. SHELDON: The e-mail</p> <p>16 says: Please sign and get them back to me and</p> <p>17 I will have the bank and TF sign.</p> <p>18 MR. ACKELSBERG: Right.</p> <p>19 MR. SHELDON: That was a</p> <p>20 reference to separately the different two</p> <p>21 attachments, one of which the bank was buying,</p> <p>22 one of which Think Finance bought?</p> <p>23 BY MR. ACKELSBERG:</p> <p>24 Q. Yeah, understood, understood.</p>	<p style="text-align: right;">Page 95</p> <p>1 price, the applicable percentage, all of that</p> <p>2 would be attached to a document called an</p> <p>3 Annex or Annex I, right?</p> <p>4 MR. DAUGHERTY: Object to</p> <p>5 form, specifically counsel, my objection would</p> <p>6 be you're referring to the number of</p> <p>7 contracts. I believe the annex refers to</p> <p>8 number of accounts. You're right. Withdrawn.</p> <p>9 THE WITNESS: You made a</p> <p>10 comment, and I was trying to go back and</p> <p>11 understand the question about an interest</p> <p>12 rate.</p> <p>13 BY MR. ACKELSBERG:</p> <p>14 Q. I don't mean the interest rate on the</p> <p>15 loans, I meant how the price is calculated,</p> <p>16 what NCA is paying.</p> <p>17 A. Okay.</p> <p>18 Q. I'm sorry if I misspoke.</p> <p>19 A. You're fine. I just wanted to</p> <p>20 understand the question. You're correct. The</p> <p>21 annex would qualify the number of accounts or</p> <p>22 contracts that you're going to buy, the total</p> <p>23 face amount and the price being paid.</p> <p>24 Q. We're looking at NCA-PA 369, and this</p>
<p style="text-align: right;">Page 94</p> <p>1 That's your understanding, as</p> <p>2 well, right? I'm not sure you caught that.</p> <p>3 A. No, I was listening. The question was,</p> <p>4 is it normal in the industry for a</p> <p>5 counterpart, a broker, to deliver contracts</p> <p>6 for signature. And the answer to that</p> <p>7 question is yes, it is.</p> <p>8 Q. And that appears to be what's happening</p> <p>9 here?</p> <p>10 A. It appears to be.</p> <p>11 Q. Before this sale, you know if you</p> <p>12 remember, fine; if you don't remember, that's</p> <p>13 fine too. Before this sale that was arranged</p> <p>14 by Brad Horrocks, had NCA purchased any</p> <p>15 installment loans -- other installment loans</p> <p>16 where the main seller was First Bank of</p> <p>17 Delaware?</p> <p>18 A. Not to my knowledge, but I can't</p> <p>19 honestly remember. My recollection is that's</p> <p>20 the first time we purchased First Bank of</p> <p>21 Delaware.</p> <p>22 Q. The way these contracts work is, I'm</p> <p>23 going to show you a few of these, is that the</p> <p>24 actual number of contracts, the purchase</p>	<p style="text-align: right;">Page 96</p> <p>1 would be the annex with attached to that</p> <p>2 initial sale agreement with purchased</p> <p>3 agreement with First Bank of Delaware, and</p> <p>4 what's happening is NCA is buying roughly</p> <p>5 9,000 installment loans. These are Think Cash</p> <p>6 loans, right, that's what we're looking at?</p> <p>7 A. Yes.</p> <p>8 Q. The principal balance of 10.5 million,</p> <p>9 and NCA is paying seven cents on the dollar</p> <p>10 for those accounts, correct?</p> <p>11 A. Correct.</p> <p>12 Q. There's also reference in the annex to</p> <p>13 something called an ineligible contract. And</p> <p>14 that's a term you're familiar with, right?</p> <p>15 A. Yes.</p> <p>16 Q. So the way this works is that NCA has a</p> <p>17 right to return and receive a refund for any</p> <p>18 ineligible contracts that NCA discovers in the</p> <p>19 portfolio that it's buying, correct?</p> <p>20 MR. DAUGHERTY: Object to</p> <p>21 form.</p> <p>22 THE WITNESS: That is</p> <p>23 correct. For most contracts we'll have a</p> <p>24 specified time period.</p>

<p style="text-align: right;">Page 97</p> <p>1 BY MR. ACKELSBURG:</p> <p>2 Q. And am I also correct that First Bank of</p> <p>3 Delaware under this contract would have the</p> <p>4 right to buy back accounts if it determines</p> <p>5 there's a legal issue with regard to a</p> <p>6 specific account?</p> <p>7 MR. DAUGHERTY: Object to</p> <p>8 form.</p> <p>9 BY MR. ACKELSBURG:</p> <p>10 Q. Am I right? If you want to go back to</p> <p>11 the agreement and look -- let's look at</p> <p>12 article six, page 19 of the agreement NCA-361.</p> <p>13 I said right to buy back. It's really more</p> <p>14 like an obligation to buy back, right?</p> <p>15 MR. DAUGHERTY: Object to</p> <p>16 form.</p> <p>17 THE WITNESS: The question</p> <p>18 is, is that typical to see in a contract?</p> <p>19 BY MR. ACKELSBURG:</p> <p>20 Q. Yes.</p> <p>21 A. Yes.</p> <p>22 Q. Okay. What kind of circumstances</p> <p>23 typically would the issuer be buying back sold</p> <p>24 accounts?</p>	<p style="text-align: right;">Page 99</p> <p>1 produced by NCA, Bates numbered 15154.</p> <p>2 - - -</p> <p>3 (Whereupon Exhibit P-70 was</p> <p>4 marked for identification.)</p> <p>5 - - -</p> <p>6 BY MR. ACKELSBURG:</p> <p>7 Q. And you'll see this is more</p> <p>8 documentation of the development of the</p> <p>9 relationship between NCA and Think Finance.</p> <p>10 And you see that this is now April of 2011,</p> <p>11 and more paperwork coming from Brett Horrocks</p> <p>12 to Brad.</p> <p>13 MR. DAUGHERTY: Object to</p> <p>14 form.</p> <p>15 BY MR. ACKELSBURG:</p> <p>16 Q. Do you see that? And he references</p> <p>17 attached: Forward flow for Payday One the</p> <p>18 LOI, I believe that's the letter of intent,</p> <p>19 for the installment loans and some additional</p> <p>20 documents.</p> <p>21 And I believe the second page</p> <p>22 of the exhibit, again Patrick I didn't include</p> <p>23 the Payday One documents. I've just included</p> <p>24 the installment loan.</p>
<p style="text-align: right;">Page 98</p> <p>1 A. There are several, quite a few probable</p> <p>2 scenarios. If the consumer is disputing it</p> <p>3 directly through the issuer, et cetera, the</p> <p>4 issuer simply wanted to buy it back to handle</p> <p>5 it, part of it is just being a good partner --</p> <p>6 a good working relationship to handle the</p> <p>7 consumer the best way that -- the most</p> <p>8 feasible correct way so the consumer is not</p> <p>9 confused, et cetera.</p> <p>10 Sometimes a consumer may --</p> <p>11 some of it is timing, right, of when the</p> <p>12 account gets sold, for example, a bankrupt</p> <p>13 account or whatnot. When we purchased the</p> <p>14 9,000 some odd accounts in this scenario,</p> <p>15 we'll run it through a bankruptcy scrub and</p> <p>16 identify consumers that have filed. And the</p> <p>17 issuer will buy those back. The same thing</p> <p>18 with deceased, et cetera.</p> <p>19 There's just many different</p> <p>20 scenarios, I guess. A lot of times the it's</p> <p>21 just -- the consumer wants the best way to</p> <p>22 handle it.</p> <p>23 Q. Let's look at another document we're</p> <p>24 marking as P-70. This also is a document</p>	<p style="text-align: right;">Page 100</p> <p>1 MR. DAUGHERTY: Right,</p> <p>2 because we jumped from Bates 54 to Bates 78.</p> <p>3 MR. ACKELSBURG: Right. I'll</p> <p>4 represent to you that if you looked at</p> <p>5 production, all I have done is taken out the</p> <p>6 PDO related documents.</p> <p>7 MR. DAUGHERTY: Are you able</p> <p>8 to tell me between -- there are what, 1, 2, 3,</p> <p>9 4, 5 attachments?</p> <p>10 MR. ACKELSBURG: There's a</p> <p>11 lot of attachments.</p> <p>12 MR. DAUGHERTY: Which</p> <p>13 attachments do we have in this exhibit?</p> <p>14 MR. ACKELSBURG: I believe</p> <p>15 that you have -- I'm not sure that I can</p> <p>16 connect them to the attachments listed, and I</p> <p>17 don't know if they're in that exact same</p> <p>18 order. But what I can tell you is that I took</p> <p>19 out the Payday One, it was a large Payday One</p> <p>20 contract, the forward flow for Payday One. Do</p> <p>21 you see reference to a forward flow document?</p> <p>22 MR. DAUGHERTY: Okay.</p> <p>23 BY MR. ACKELSBURG:</p> <p>24 Q. Just looking at the second page --</p>

<p style="text-align: right;">Page 101</p> <p>1 MR. SHELDON: I'm going to</p> <p>2 place a continuing objection here to the</p> <p>3 extent that removal of those attachments, it's</p> <p>4 not longer clear to me how those attachments</p> <p>5 necessarily sync up with the documents</p> <p>6 referenced in here.</p> <p>7 MR. ACKELSBURG: I</p> <p>8 understand. You'll, I'm sure be checking my</p> <p>9 deletions, what I included in the exhibit and</p> <p>10 what I didn't. I will represent to you that I</p> <p>11 took out the Payday One forward flow</p> <p>12 agreement. And I believe that I left the rest</p> <p>13 of the documents in there. I wasn't sure what</p> <p>14 they connected to.</p> <p>15 BY MR. ACKELSBURG:</p> <p>16 Q. Did you have a chance to look at the</p> <p>17 letter of intent dated March 25, 2011?</p> <p>18 A. Yes.</p> <p>19 Q. This appears to be a letter of intent to</p> <p>20 enter into a formal forward flow agreement for</p> <p>21 more installment loans over the next 12</p> <p>22 months, correct?</p> <p>23 MR. DAUGHERTY: Object to</p> <p>24 form.</p>	<p style="text-align: right;">Page 103</p> <p>1 is coming, correct?</p> <p>2 MR. DAUGHERTY: Objection,</p> <p>3 mischaracterizes the document.</p> <p>4 BY MR. ACKELSBURG:</p> <p>5 Q. That it's imminent?</p> <p>6 A. Based on the three e-mails here, I</p> <p>7 assume we would execute and receive a new</p> <p>8 volume of accounts.</p> <p>9 Q. When you say -- reply to Brad and Shawn:</p> <p>10 Be ready to get after it in Phoenix. What are</p> <p>11 you referencing there?</p> <p>12 A. You know, trying to go back to the frame</p> <p>13 of mind I was in at that time. I think it was</p> <p>14 just a simple -- when you have call centers,</p> <p>15 one thing that you'll quickly learn from</p> <p>16 collectors is they get excited about new</p> <p>17 business. So when we had new business coming</p> <p>18 in, it was an exciting time for our call</p> <p>19 centers.</p> <p>20 So, you know, just from an</p> <p>21 energy standpoint et cetera, we were ready and</p> <p>22 excited about a potential new batch of</p> <p>23 accounts.</p> <p>24 - - -</p>
<p style="text-align: right;">Page 102</p> <p>1 THE WITNESS: That's what it</p> <p>2 appears to be.</p> <p>3 BY MR. ACKELSBURG:</p> <p>4 Q. At the same seven percent price?</p> <p>5 A. Yes.</p> <p>6 Q. Signed by Jason Harbison, senior vice</p> <p>7 president of Think Finance.</p> <p>8 MR. SHELDON: Objection to</p> <p>9 form?</p> <p>10 BY MR. ACKELSBURG:</p> <p>11 Q. Or TC Administrative Services.</p> <p>12 A. Yes, that's what the document reads.</p> <p>13 Q. And the first sale under that forward</p> <p>14 flow I believe happened in early May. Let's</p> <p>15 give you another document. We're in the year</p> <p>16 2011.</p> <p>17 - - -</p> <p>18 (Whereupon Exhibit P-71 was</p> <p>19 marked for identification.)</p> <p>20 - - -</p> <p>21 BY MR. ACKELSBURG:</p> <p>22 Q. It looks like you were actually included</p> <p>23 in these e-mails where you're being cc'd by</p> <p>24 Brad to let you know that the Think flow sale</p>	<p style="text-align: right;">Page 104</p> <p>1 (Whereupon Exhibit P-72 was</p> <p>2 marked for identification.)</p> <p>3 - - -</p> <p>4 BY MR. ACKELSBURG:</p> <p>5 Q. Okay, let's look at seven P 72 which I</p> <p>6 am going to show you now. Now this appears to</p> <p>7 be Horrocks closing, in December 2011,</p> <p>8 Horrocks closing a new deal for forward flow</p> <p>9 between Think Finance and NCA, correct?</p> <p>10 MR. DAUGHERTY: Object to</p> <p>11 form.</p> <p>12 THE WITNESS: To me the flow</p> <p>13 of e-mails was, you know, just from a timing</p> <p>14 standpoint is the forward flow was up for</p> <p>15 renewal and renegotiating.</p> <p>16 BY MR. ACKELSBURG:</p> <p>17 Q. And it looks like the price is being</p> <p>18 renegotiated, as well, correct?</p> <p>19 A. Yes, that's what it looks like.</p> <p>20 Q. It looks like, it's like Brett Horrocks</p> <p>21 negotiated a slightly higher price for the --</p> <p>22 for the loans going forward, correct?</p> <p>23 A. I can't confirm that Brett negotiated --</p> <p>24 Q. Somebody did?</p>

<p style="text-align: right;">Page 105</p> <p>1 A. Somebody did, yes, there's a higher 2 price here than what was being paid, but yes. 3 Q. Sticking with that for a minute, in the 4 middle on the first page of the document, the 5 next to last e-mail, the one from December 6 12th, I'm sorry. Yeah, it looks like December 7 12th, but I'm looking at the one from Brett 8 Horrocks. He's saying, I guess to Brad, what 9 about an increase of 10 BPS for us when we get 10 this thing done. Do you see that? 11 A. Yes. 12 Q. BPS is basis points, right? 13 A. Yes, that's the way I read it. 14 Q. And Brad seems to say in reply that he 15 doesn't have a problem with that? 16 A. That's what Brad's rely says, yes. 17 Q. Am I -- do I understand this to mean 18 that NCA is also paying Horrocks? 19 A. Yes, NCA was also paying Horrocks. 20 Q. And that's standard or is that unusual? 21 A. It's standard. Typically the brokers 22 will -- they have different pricing 23 structures. Brad's looks like -- was 24 basically just on basis points. Some will do</p>	<p style="text-align: right;">Page 107</p> <p>1 A. Yeah, he's brokering the debt sale and 2 he's doing other things outside of my 3 knowledge. 4 Q. As the broker for Think Finance, one of 5 the things he'd be trying to deliver to Think 6 Finance would be the best possible price, the 7 highest price that he could get from NCA, 8 correct? 9 MR. DAUGHERTY: Object to 10 form. 11 THE WITNESS: I don't know 12 that I agree with that. We work with brokers 13 today, one of them called Debt Trader and 14 they're very prevalent in this space. Their 15 goal is to get something marketed and sold. 16 And so that requires discussions on both sides 17 of the fence, right. 18 BY MR. ACKELSBURG: 19 Q. Uh-huh. 20 A. What we want to buy it for in a perfect 21 world is much different than what the seller 22 wants to sell it for. So brokers, in my best 23 understanding, will ultimately work with both 24 parties to get somebody to a point that it</p>
<p style="text-align: right;">Page 106</p> <p>1 a percentage of the overall sale on a monthly 2 basis. It's very typical. We still see it 3 today. 4 Q. Do you know if Brad -- I'm sorry. Do 5 you know if Brett Horrocks was paid a fee for 6 all of the Think Finance business by NCA, as 7 well as Think Finance? 8 MR. DAUGHERTY: Object to 9 form. 10 THE WITNESS: I don't know 11 whether he was getting paid by Think Finance. 12 What I can say is I would expect that he 13 would, but I don't know if that was happening. 14 BY MR. ACKELSBURG: 15 Q. Right. You would expect that he was 16 paid by Think Finance because, as you said 17 before, no one works for nothing? 18 A. Right. 19 Q. And he's representing Think Finance in 20 his dealings with NCA, correct? 21 MR. DAUGHERTY: Object to 22 form. 23 BY MR. ACKELSBURG: 24 Q. Right, that's what we're talking about?</p>	<p style="text-align: right;">Page 108</p> <p>1 makes sense, right. 2 So the fact that if he was 3 being paid on a monthly basis for brokering 4 the debt sale from Think Finance or any of the 5 other issuers that we had contracts with, it 6 doesn't surprise me, I guess. 7 Q. So based on your experience within this 8 space, do the issuers that -- is there an 9 expectation among the issuers that the broker 10 is going to get paid by both parties? 11 MR. DAUGHERTY: Object to 12 form. 13 THE WITNESS: I don't know 14 that I can answer that. I can tell you that 15 other brokers that we worked with, it's well 16 known by both parties that the broker is being 17 paid by both parties. So I would say that it 18 would be a common practice. 19 BY MR. ACKELSBURG: 20 Q. All right. You'll see that he 21 references installment -- in this new forward 22 flow, the installment loan purchases would 23 start in December. You're in December there 24 in these e-mails. So it would be starting</p>

<p style="text-align: right;">Page 109</p> <p>1 right away?</p> <p>2 A. Can you tell me which document or e-mail</p> <p>3 you're referring to. Just make sure I'm</p> <p>4 looking --</p> <p>5 Q. It looks like -- the whole thing, it</p> <p>6 looks like it's getting ready for a sale in</p> <p>7 January of 2012, that's what it looks like,</p> <p>8 the last e-mail, correct? Whatever. You</p> <p>9 don't know when --</p> <p>10 A. Yeah, I mean directionally, yeah, I</p> <p>11 would. I would agree that that's what it</p> <p>12 looks like. And it would, based on the</p> <p>13 previous documents that we looked at, it would</p> <p>14 line up with the original forward flow.</p> <p>15 - - -</p> <p>16 (Whereupon Exhibit P-73 was</p> <p>17 marked for identification.)</p> <p>18 - - -</p> <p>19 BY MR. ACKELSBURG:</p> <p>20 Q. Let's look at P-73, I believe this is</p> <p>21 the forward flow that is being described.</p> <p>22 A. But this wasn't attached to that</p> <p>23 previous -- you're just saying it's the flow</p> <p>24 being described?</p>	<p style="text-align: right;">Page 111</p> <p>1 A. The question is, would you be correct in</p> <p>2 stating that this is the first purchase sale</p> <p>3 agreement between Plain Green and NCA; am I</p> <p>4 understanding that correctly.</p> <p>5 Q. Yes.</p> <p>6 A. I don't --</p> <p>7 Q. This looks like it's not a forward flow,</p> <p>8 right. This one actually looks like it's just</p> <p>9 a sale for specific loans, if you look at the</p> <p>10 annex.</p> <p>11 MR. DAUGHERTY: Object to the</p> <p>12 characterization of the document.</p> <p>13 THE WITNESS: Typically you</p> <p>14 would have the annex for that monthly sale.</p> <p>15 BY MR. ACKELSBURG:</p> <p>16 Q. You say this could be a forward flow?</p> <p>17 A. I'm actually reading through it so I can</p> <p>18 answer that initial question.</p> <p>19 I can't say whether this was</p> <p>20 used as the forward flow agreement, but I mean</p> <p>21 it's a loan sale agreement. And typically you</p> <p>22 would see this, you know with a timeframe of</p> <p>23 what the flow might look like, and then we'd</p> <p>24 execute an annex on a monthly basis.</p>
<p style="text-align: right;">Page 110</p> <p>1 Q. Yes. It's not an attachment.</p> <p>2 MR. DAUGHERTY: Irv, I don't</p> <p>3 know that I agree with your characterization.</p> <p>4 BY MR. ACKELSBURG:</p> <p>5 Q. Let me withdrawal the characterization,</p> <p>6 because I'm actually not entirely sure how it</p> <p>7 connects to the e-mail. I will let the</p> <p>8 witness make that -- I'll ask the witness.</p> <p>9 I want to show you a document</p> <p>10 that has been marked P-73 entitled Loan Sale</p> <p>11 Agreement.</p> <p>12 A. Okay.</p> <p>13 Q. You will see it actually has the same</p> <p>14 date as the last e-mail. Why don't you tell</p> <p>15 me what we're looking at.</p> <p>16 MR. DAUGHERTY: You're</p> <p>17 referring now to Exhibit-73?</p> <p>18 BY MR. ACKELSBURG:</p> <p>19 Q. Yes.</p> <p>20 A. It's a loan sale agreement.</p> <p>21 Q. Let me ask you this and try to move this</p> <p>22 along. Would I be correct in stating that</p> <p>23 this is the first loan sale agreement between</p> <p>24 Plain Green and NCA?</p>	<p style="text-align: right;">Page 112</p> <p>1 Q. Right. So would it be common to -- if</p> <p>2 you're -- if NCA is buying a new portfolio or</p> <p>3 a portfolio from a new issuer, to first buy an</p> <p>4 initial set of loans before committing to a</p> <p>5 forward flow?</p> <p>6 A. That would be in the best interest of</p> <p>7 NCA or the debt buyer. It doesn't always get</p> <p>8 that luxury. A lot of times -- I know that</p> <p>9 Brad and -- even today we'll ask if we can</p> <p>10 start off with a short term flow or a sample</p> <p>11 purchase, et cetera, specifically if it's a</p> <p>12 product that we never purchased or a different</p> <p>13 product line, you know, just to understand and</p> <p>14 learn what the value might be based on it.</p> <p>15 Q. Why don't we take a look at another</p> <p>16 agreement. The next -- I see, I did it</p> <p>17 slightly differently. The next document is</p> <p>18 just a transmittal, a transmittal e-mail.</p> <p>19 It's 74. In this case I did actually copy, if</p> <p>20 any of you all would like to see it, the rest</p> <p>21 of the attachments that I'm not going to be</p> <p>22 including. But it's here for anybody to look</p> <p>23 at, if you want.</p> <p>24 I'm going to also show you --</p>

<p style="text-align: right;">Page 113</p> <p>1 I want to show you three exhibits, 74, 75 and</p> <p>2 76. We will do this together.</p> <p>3 - - -</p> <p>4 (Whereupon Exhibits P-74, P-75</p> <p>5 and P-76 were marked for identification.)</p> <p>6 - - -</p> <p>7 MR. SHELDON: Irv, are you</p> <p>8 representing that 75 and 76 are some of the</p> <p>9 attachments to 74?</p> <p>10 MR. ACKELSBURG: I am. And I</p> <p>11 have others that I brought with me, because I</p> <p>12 anticipated that question. So if you want to</p> <p>13 take a look at the others in that e-mail, I</p> <p>14 have them here. But again, I'm not including</p> <p>15 the Payday One documentation.</p> <p>16 BY MR. ACKELSBURG:</p> <p>17 Q. We can start with 74. That's NCA page</p> <p>18 number 659. You'll see that's an e-mail</p> <p>19 between NCA and Horrocks, right, where</p> <p>20 Horrocks says that he is sending -- he's</p> <p>21 attaching for NCA both an agreement for sale</p> <p>22 of Plain Green debt for that month, as well as</p> <p>23 a forward flow agreement. Do you see that?</p> <p>24 A. Yes.</p>	<p style="text-align: right;">Page 115</p> <p>1 form.</p> <p>2 BY MR. ACKELSBURG:</p> <p>3 Q. I mean if you go down to the last page</p> <p>4 -- if you go down to the annex on this</p> <p>5 exhibit, it's page 622 of NCA.</p> <p>6 A. Yes.</p> <p>7 Q. You'll see that it's all to be</p> <p>8 determined. This is what a forward flow looks</p> <p>9 like, right, that you're talking about what</p> <p>10 the annex agreements will look like pursuant</p> <p>11 to this particular forward flow over the</p> <p>12 course of the next 12 months or so.</p> <p>13 A. Correct.</p> <p>14 MR. SHELDON: I'm just going</p> <p>15 to lodge a continuing objection to questions</p> <p>16 regarding these documents. The e-mail that's</p> <p>17 being quoted is from Brett Horrocks on</p> <p>18 February 10th, 2012, it references attaching</p> <p>19 several agreements. But the top e-mail in</p> <p>20 that chain is from Lori Bates to several</p> <p>21 individuals, including Brett Horrocks, and it</p> <p>22 says executed. And then attached is a series</p> <p>23 of PDFs implying that the documents have been</p> <p>24 executed that were attached to this e-mail.</p>
<p style="text-align: right;">Page 114</p> <p>1 MR. SHELDON: Object to form.</p> <p>2 BY MR. ACKELSBURG:</p> <p>3 Q. If you look at Exhibit-75, this would</p> <p>4 appear to be the sale for that particular</p> <p>5 month that he was referring to, right?</p> <p>6 MR. DAUGHERTY: Object to</p> <p>7 form.</p> <p>8 THE WITNESS: This was a sale</p> <p>9 that was closed on February 10, 2012.</p> <p>10 BY MR. ACKELSBURG:</p> <p>11 Q. Which is the date of the e-mail, right?</p> <p>12 A. Which is the date of the e-mail.</p> <p>13 Q. And then if you look at -- that does</p> <p>14 appear to be a -- what he -- it appears to be</p> <p>15 what he's referring to as the sale for the</p> <p>16 current month of Plain Green loans, right?</p> <p>17 A. It appears that's what he's referring</p> <p>18 to, yes.</p> <p>19 Q. If you look at Exhibit-76, starting with</p> <p>20 NCA Bates number 603, this would appear to be</p> <p>21 the forward flow that Brett was referring to</p> <p>22 or Brett was attaching in his e-mail. Do you</p> <p>23 see that?</p> <p>24 MR. DAUGHERTY: Object to</p>	<p style="text-align: right;">Page 116</p> <p>1 And I don't see signatures on either of the</p> <p>2 two documents that are being referenced in the</p> <p>3 questioning.</p> <p>4 MR. DAUGHERTY: That's fine.</p> <p>5 I also note for the record that the e-mail</p> <p>6 appears to have a higher Bates number than the</p> <p>7 attachments. The e-mail starts at 659. The</p> <p>8 attachments are at 599 and 603, typically what</p> <p>9 I would expect is for the attachments to have</p> <p>10 a higher beginning Bates number than the</p> <p>11 e-mail.</p> <p>12 MR. ACKELSBURG: Right. In</p> <p>13 the production that I received from your firm,</p> <p>14 Patrick, I received multiple copies of these</p> <p>15 documents. I can't tell you that it's the</p> <p>16 exact -- I can tell you it's identical to the</p> <p>17 one in the sequence, that there's no rhyme or</p> <p>18 reason to me using one or the other.</p> <p>19 If you want to represent that</p> <p>20 these were never executed, that's fine. I'm</p> <p>21 assuming they were and you have multiple</p> <p>22 copies of these. But your objections are</p> <p>23 noted.</p> <p>24 BY MR. ACKELSBURG:</p>

<p style="text-align: right;">Page 117</p> <p>1 Q. So I think -- remembering your previous 2 testimony, Mr. Rempel, you told us that up 3 until -- I believe it was -- I think you said 4 2014 or before that, the -- with regard to 5 purchasing from Think Finance's tribal 6 partners, you were basically getting the 7 documentation initially, directly from Think 8 Finance, during the earlier period, right? 9 MR. SHELTON: Objection to 10 form. 11 MR. DAUGHERTY: Object to 12 form. 13 THE WITNESS: As we seen in a 14 lot of the e-mails, Brett Horrocks being the 15 in between was the one actually getting the 16 documents to us, as to who he was directly 17 getting them from and acting on behalf of, I 18 don't know that I can answer that. 19 However, in my earlier 20 testimony I did say my recollection of the 21 early parts of the relationship that we were 22 more involved or Think Cash, Think Finance was 23 more involved with, just the building of the 24 relationship and the transfer of that</p>	<p style="text-align: right;">Page 119</p> <p>1 THE WITNESS: I don't know if 2 that was part of the understanding. And I 3 honestly wouldn't know if they had another 4 debt buyer. I think maybe we made the 5 assumption that we were the only ones buying 6 it, but I don't know that. 7 BY MR. ACKELSBURG: 8 Q. Now if you go back to the e-mail, I 9 believe it's 74, do you see Brett Horrocks in 10 his e-mail to NCA saying that he's also 11 working on the first sale of the Great Plain 12 product? 13 A. Yes, I see that. 14 Q. In fact, that eventually happened as 15 well, correct? 16 A. Yes. 17 Q. If we look at the next exhibit, 77, I 18 think we're going to see a contract that Brett 19 delivered with regard to Great Plains. 20 - - - 21 (Whereupon Exhibits P-77, P-78 22 and P-79 were marked for identification.) 23 - - - 24 BY MR. ACKELSBURG:</p>
<p style="text-align: right;">Page 118</p> <p>1 relationship to the tribes and who we were 2 dealing with. 3 BY MR. ACKELSBURG: 4 Q. In these -- typically in these forward 5 flow agreements, would -- so NCA is agreeing, 6 like the one we just looked at, NCA would be 7 agreeing to purchase periodic -- make periodic 8 purchases during the term covered by the 9 forward flow agreement, correct? 10 MR. DAUGHERTY: Object to 11 form. 12 BY MR. ACKELSBURG: 13 Q. That would be the expectation? 14 A. Yes, typically the expectation would be 15 known as far as whether it's a monthly sell or 16 12 installments let's say or six or three. 17 Q. Would the understanding be that in this 18 context that the Plain Green loans would be -- 19 during the course of the forward flow, that 20 the Plain Green loans would be sold 21 exclusively to NCA; is that part of the 22 understanding? 23 MR. DAUGHERTY: Object to 24 form.</p>	<p style="text-align: right;">Page 120</p> <p>1 Q. Let me also show you 78 and 79 and move 2 this along. Here is 78 and here is 79. If 3 you look at 77, it says it's a draft. Do you 4 see it says, draft February 8th, 2012? Do you 5 see that? 6 A. Yes, I do. 7 Q. Can you tell, looking at this document, 8 who is doing the drafting, whether Brett was 9 delivering a draft agreement or whether it 10 would have come from Brad? 11 MR. DAUGHERTY: Object to 12 form. Counsel, I also have an objection that 13 often there's questions about who it came from 14 and things like that. It can be answered by 15 producing or showing the witness the 16 associated e-mail. Are you representing to me 17 that this was a standalone document as it was 18 produced, it was a child to an e-mail? 19 MR. ACKELSBURG: I don't 20 remember. I think it's standalone. We got 21 many standalone agreements from NCA. It was 22 hard reconstructing. 23 THE WITNESS: Answering the 24 question, I can't tell from the timeframe who</p>

<p style="text-align: right;">Page 121</p> <p>1 -- where it came from, who drafted it, I don't</p> <p>2 know.</p> <p>3 BY MR. ACKELSBURG:</p> <p>4 Q. And then there's a document that has the</p> <p>5 title execution copy. Do you see that?</p> <p>6 A. Yes.</p> <p>7 Q. It's February 27th. Do you know</p> <p>8 anything about the negotiation of this</p> <p>9 agreement and what the hold up was?</p> <p>10 MR. SHELTON: Object to form.</p> <p>11 MR. DAUGHERTY: Objection to</p> <p>12 the characterization of there being a hold up.</p> <p>13 THE WITNESS: Your question,</p> <p>14 why -- I guess I don't understand the</p> <p>15 question, the time between February 8th and</p> <p>16 February 27th?</p> <p>17 BY MR. ACKELSBURG:</p> <p>18 Q. Yeah. You don't know any issues that</p> <p>19 were --</p> <p>20 A. No.</p> <p>21 Q. You weren't involved in this negotiation</p> <p>22 at all, were you?</p> <p>23 A. No, without the corresponding e-mails,</p> <p>24 it could be that there was that amount of time</p>	<p style="text-align: right;">Page 123</p> <p>1 MR. SHELTON: Can you tell me</p> <p>2 the Bates number?</p> <p>3 MR. ACKELSBURG: Yes, 899.</p> <p>4 MR. SHELTON: Thanks.</p> <p>5 MR. DAUGHERTY: Did you have</p> <p>6 a question pending for the witness?</p> <p>7 BY MR. ACKELSBURG:</p> <p>8 Q. Is this the initial Great Plain loan</p> <p>9 sale pursuant to the forward flow?</p> <p>10 MR. DAUGHERTY: Object to</p> <p>11 form.</p> <p>12 THE WITNESS: I honestly</p> <p>13 can't -- I don't know.</p> <p>14 BY MR. ACKELSBURG:</p> <p>15 Q. You see it's dated February 27th,</p> <p>16 correct?</p> <p>17 MR. SHELTON: Note the</p> <p>18 document is not executed.</p> <p>19 MR. ACKELSBURG: Right. Some</p> <p>20 of the documents produced have executed, some</p> <p>21 of them aren't. I assume there's an executed</p> <p>22 copy. You're right, your comment is noted.</p> <p>23 MR. DAUGHERTY: I think the</p> <p>24 witness was remarking that there appears to</p>
<p style="text-align: right;">Page 122</p> <p>1 that could be utilized, right.</p> <p>2 Q. Right.</p> <p>3 A. I'm sure there was other work, whoever</p> <p>4 was executing these was doing.</p> <p>5 Q. The signator on this particular document</p> <p>6 from the Great Plains lending site was someone</p> <p>7 named Charles Moncooyea, President. This</p> <p>8 being in 2012, it would have been your</p> <p>9 expectation that with regard to getting the</p> <p>10 signature of someone from the tribe, that</p> <p>11 would have been part of Brett's job. That</p> <p>12 would have been your expectation, right?</p> <p>13 MR. DAUGHERTY: Object to</p> <p>14 form.</p> <p>15 THE WITNESS: Yes, I mean he</p> <p>16 delivered them to us, my expectation. You</p> <p>17 know, the relationship is we would have</p> <p>18 delivered them back to him for signature from</p> <p>19 the tribe, and we could get an executed copy,</p> <p>20 both parties would.</p> <p>21 BY MR. ACKELSBURG:</p> <p>22 Q. If we look at Exhibit-79, that appears</p> <p>23 to be the first of the loan sales pursuant</p> <p>24 to --</p>	<p style="text-align: right;">Page 124</p> <p>1 be, assuming other portions of the document</p> <p>2 are correct, a typographical error under item</p> <p>3 one on the first page.</p> <p>4 BY MR. ACKELSBURG:</p> <p>5 Q. Right, the date, the 2015.</p> <p>6 A. The volume, et cetera, it could be the</p> <p>7 initial Annex I.</p> <p>8 Q. Now over the course of the next several</p> <p>9 years, from 2012, 2013, 2014 there were, in</p> <p>10 fact, monthly sales of both Plain Green and</p> <p>11 Great Plains Lending charge offs from that NCA</p> <p>12 purchase, right?</p> <p>13 A. Yes.</p> <p>14 Q. At least up until 2014, they were all</p> <p>15 brokered by Brett Horrocks, right?</p> <p>16 A. Until 20 what?</p> <p>17 Q. Up until 2014.</p> <p>18 A. Yes.</p> <p>19 Q. And that was in his capacity as the</p> <p>20 broker for Think Finance?</p> <p>21 MR. DAUGHERTY: Object to</p> <p>22 form.</p> <p>23 BY MR. ACKELSBURG:</p> <p>24 Q. As far as NCA knew?</p>

<p style="text-align: right;">Page 125</p> <p>1 A. As far as we knew, yes. We were paying 2 for brokering the deals for us, as well. 3 Q. What about Think's other installment 4 loan product, a product called Rise. Did NCA 5 also purchase Rise charge offs from Think? 6 MR. DAUGHERTY: I'll object 7 on the grounds that it's outside the scope of 8 the 30(b)6 deposition notice. 9 BY MR. ACKELSBURG: 10 Q. If you know. 11 A. We have and do buy the product of Rise. 12 Q. And you're doing that today, correct? 13 A. We do it today, with the exception of 14 it's bought from a group called Elevate as 15 opposed to Think Cash or Think Finance. 16 Q. Are those two brokered by Brett 17 Horrocks? 18 MR. DAUGHERTY: Same 19 objection. 20 THE WITNESS: The Rise is not 21 brokered by Brett Horrocks. 22 BY MR. ACKELSBURG: 23 Q. I want to ask a question about the 24 procedures. So with regard to these rough</p>	<p style="text-align: right;">Page 127</p> <p>1 Brett Horrocks through NSFTP. 2 BY MR. ACKELSBURG: 3 Q. So it wouldn't come directly from Think, 4 it would come Think to Brett, from Brett to 5 NCA? 6 MR. SHELTON: Object to form, 7 mischaracterizes his testimony. 8 THE WITNESS: That's not my 9 understanding. 10 BY MR. ACKELSBURG: 11 Q. What's your understanding? 12 A. My understanding is, as we've seen here, 13 the contracts are with either Plain Green or 14 Great Plains, based on the transmission of 15 those contracts and signatures, my assumption 16 and understanding is that Brett would get the 17 signatures directly from the tribe, et cetera, 18 provide it to us, such as -- 19 Q. No, no, I understand that with the 20 contract. I'm talking about the massive 21 electronic file, where would Brett get that 22 from? 23 A. I can't tell you where he would get it 24 from. I assume that he was getting it from</p>
<p style="text-align: right;">Page 126</p> <p>1 periodic sales, roughly on a monthly basis, 2 can you tell what would happen from -- and I'm 3 really trying to understand this sort of 4 uploading, the process. 5 So there's a sale of Plain 6 Green or Great Plains loans in a particular 7 month. The sale goes -- you mentioned 8 scrubbing files, right. When does that happen 9 and who does that? 10 A. It happens after the delivery of the 11 account. I mean the process would be to 12 execute the contracts, get a mass file so we 13 can- 14 Q. Are you talking about an electronic 15 transmission? 16 A. Yeah, electronic mass file to compare 17 the bill of sale to -- or the annex to the 18 mass file, the number, the volume, et cetera. 19 Q. That transmission would come from Think 20 Finance, correct? 21 MR. SHELTON: Objection. 22 THE WITNESS: I can't say 23 specifically say I know where it came from. I 24 do believe that we were receiving that from</p>	<p style="text-align: right;">Page 128</p> <p>1 Great Plains, Plain Green, the owners of the 2 lending institution. 3 BY MR. ACKELSBURG: 4 Q. Do you think they had any capacity to do 5 that, to transmit those big electronic files? 6 MR. DAUGHERTY: Object to 7 form. 8 BY MR. ACKELSBURG: 9 Q. In 2012, 2013? 10 A. I don't know whether they did or didn't. 11 We did execute on a monthly basis the timeline 12 from, you know, when we executed these 13 contracts that we're seeing examples of today, 14 to the time that we would have the file 15 dropped to a secured server. 16 Q. So you would get those -- you know that 17 you got the files from Brett, right? 18 A. Yes. 19 Q. How exactly Brett got them, you don't 20 really know, do you? 21 MR. DAUGHERTY: Object to 22 form. 23 THE WITNESS: No, I don't 24 know. I mean our relationship was with Brett</p>

<p style="text-align: right;">Page 129</p> <p>1 and contractually going through to the tribe. 2 BY MR. ACKELSBURG: 3 Q. All right. So you get an electronic 4 transmission from Brett, and what's the next 5 thing that would happen? Is that the 6 scrubbing? 7 A. Well, once we funded -- once we actually 8 get -- 9 Q. Oh, we didn't talk about the money, 10 yeah, yeah, yeah. So how would that happen? 11 You get a wire, right? You would send a wire? 12 A. We would send a wire to the account. 13 Q. That's listed in the Annex I, right? 14 A. Listed in the annex, right. Upon 15 delivering that transfer of money, Brett would 16 put a -- not a mass file but the actual data 17 file -- load file is what we call it, on the 18 SFDP. That would be pulled down by a 19 gentleman by the name of Steven Torres with 20 NCA. He's in our IT Department. He would 21 load that into WinDet, our system of record. 22 (Reporter clarification.) Windet, our 23 collection platform system. 24 When he does that, as he's</p>	<p style="text-align: right;">Page 131</p> <p>1 your work with your resources. 2 The next steps are, we 3 ultimately get it out to our call centers. 4 Q. What -- in a particular -- for a 5 particular loan, loan account, within a 6 portfolio that you just bought and just 7 uploaded, what content do you have with regard 8 to a particular consumer debt? 9 MR. DAUGHERTY: Object to 10 form. 11 THE WITNESS: Just a general 12 consumer account. 13 BY MR. ACKELSBURG: 14 Q. So you have payment history? 15 A. Yes. It differs from, you know, 16 products, but we have to have a payment 17 history or access to it. We have to have -- 18 the original media is what we call the 19 contracts that the consumer signed or access 20 to it. 21 Today it's more typical in 22 the electronic age that everything is on a 23 disc or sent electronically. Immediately upon 24 the purchase, you know, we have qualifying --</p>
<p style="text-align: right;">Page 130</p> <p>1 doing that there are some steps that his team 2 or he does to make sure that we received all 3 of the information and the file format meets 4 the expectation. We can have charge off 5 dates, date of birth, socials, et cetera, to 6 just verify that the file is correct. 7 Once that's done, it would 8 get loaded into our system. That night into 9 day processes would scrub the file for -- 10 actually build it. They would build an output 11 file to go to vendors that would scrub, send 12 us hits back, let us know if it's bankrupt, 13 deceased, et cetera. 14 Those accounts would be 15 identified and sold back to Great Plains or 16 Plain Green or Payday loan, whomever we bought 17 from. At that point, we would assign and 18 purchase a Trans Union recovery score, apply 19 it to the file. 20 Q. What's the purpose of that? 21 A. It helps prioritize our work. It's not 22 a credit or a FICO score, it's just a recovery 23 tool that helps us identify who may be more 24 apt to pay, et cetera. So you can prioritize</p>	<p style="text-align: right;">Page 132</p> <p>1 everything needed to qualify that the consumer 2 is the one that took out the loan, verify it, 3 you know, the address, all of the way to the 4 -- some internet based loans, the computer 5 that it was taken from. 6 Q. So we're going to talk later about the 7 buy back of the Pennsylvania loans, but I am 8 curious about what you have within your data 9 today about the Pennsylvania loans. And I'm 10 talking about Plain Green, Great Plains 11 Lending, Mobil Loans, do you still have data, 12 even though you sent the loans back to Think? 13 MR. SHELDON: Objection to 14 form. 15 THE WITNESS: Your comment 16 about we're going to get to that later today, 17 I mean -- 18 BY MR. ACKELSBURG: 19 Q. I'm just curious about -- I'm just 20 asking about data. Do you still have data? 21 A. Yes. 22 Q. You don't have loans anymore? 23 A. Yes, we still have data. 24 MR. DAUGHERTY: Objection.</p>

<p style="text-align: right;">Page 133</p> <p>1 THE WITNESS: We still have 2 inactive Pennsylvania accounts that are not 3 being collected, called, et cetera, in our 4 system. 5 BY MR. ACKELSBURG: 6 Q. Okay. If we were to ask your IT people 7 to generate a file listing all of those 8 inactive Pennsylvania accounts, could that be 9 done? 10 MR. SHELTON: Objection. 11 MR. DAUGHERTY: Irv, I object 12 to you essentially directing a request for 13 production to the witness. 14 MR. ACKELSBURG: I didn't 15 direct it. I'm asking him -- it's perfectly 16 legitimate. I'm asking what his system is 17 capable of producing. In fact, I believe this 18 connects to the topic of the Pennsylvania 19 accounts. 20 BY MR. ACKELSBURG: 21 Q. So anyway, could that be done? 22 A. Yes, we could create a file, yes. 23 Q. And could you also retrieve the actual 24 loan agreements, the Pennsylvania borrowers</p>	<p style="text-align: right;">Page 135</p> <p>1 Q. Mr. Rempel, I'm showing you an exhibit 2 that we have marked as Plaintiff's Exhibit 80. 3 It's a Think Finance document, 61148. You'll 4 see that -- I realize there's no one from NCA 5 who is on the e-mail itself, though the 6 subject appears to about be about NCA. Do you 7 see that? 8 A. Yes, I see that it's a discussion about 9 the sales that we were buying at that time, 10 and ultimately renewing the flow. But just 11 based on the e-mail, I'm making that 12 assumption because we were buying it, right. 13 For I all I know in this 14 e-mail, they could have been looking at 15 selling it to somebody else. Is that fair? 16 Q. I guess my question is, do you know if, 17 in fact, NCA was renegotiating the agreements 18 with Think Finance in this timeframe? 19 A. Yes. Can I clarify that. 20 Q. Sure, go ahead. 21 A. We've been discussing this all morning, 22 but it would have been -- our contact would 23 have been with Brett Horrocks. 24 Q. Sure, sure. I know what you mean. I</p>
<p style="text-align: right;">Page 134</p> <p>1 who NCA was collecting? And I am talking 2 about Plain Green, Great Plains Lending and 3 Mobil Loans? 4 MR. DAUGHERTY: Same 5 objection. 6 THE WITNESS: I do believe 7 that we have access to those. 8 MR. ACKELSBURG: Is this a 9 good time for a break? 10 MR. DAUGHERTY: Do you want 11 to do lunch now? 12 MR. ACKELSBURG: Yeah. I'm 13 about ready to switch. 14 VIDEOTAPE OPERATOR: That 15 concludes DVD number two. The time is 12:29 16 p m. We are off the record. 17 - - - 18 (Whereupon Exhibit P-80 was 19 marked for identification.) 20 - - - 21 VIDEOTAPE OPERATOR: This begins 22 DVD number three, the time is 1:22, we're on 23 the record. 24 BY MR. ACKELSBURG:</p>	<p style="text-align: right;">Page 136</p> <p>1 understand. 2 Do you remember there being a 3 back and forth? I mean it looks like they are 4 discussing a redline that Brett got back from 5 NCA. Do you remember any of that? 6 A. I don't necessarily remember it. That's 7 fairly normal, typical, you know, during the 8 negotiations or changes to the charge off, not 9 just change the dates, but saying that we're 10 going to move a to a 60-day delinquency as 11 opposed to -- I don't know what it was before, 12 maybe 90. And in their eyes, the way I read 13 this is, what's going to warrant a price 14 increase. 15 Q. So do you remember that, that he started 16 getting 60 day as opposed to older debt from 17 Think Finance? 18 MR. DAUGHERTY: Object to 19 form. 20 THE WITNESS: I don't know 21 that I individually remember that. I do 22 recall the price point change. I'm sure that 23 there would have been a discussion amongst the 24 executive team that, you know, based on the</p>

<p style="text-align: right;">Page 137</p> <p>1 price increase, the delinquency timeframe</p> <p>2 would be reduced to 60 days. At the time with</p> <p>3 what I was responsible for, I clearly remember</p> <p>4 the price increase, simply because when I look</p> <p>5 at, you know, performance reports, et cetera,</p> <p>6 it's important to know what you pay for it.</p> <p>7 Otherwise you don't really know how you're</p> <p>8 doing, right.</p> <p>9 BY MR. ACKELSBURG:</p> <p>10 Q. Right.</p> <p>11 A. So I would pay attention to that.</p> <p>12 Q. There's also reference to -- you'll see</p> <p>13 that Brett is saying to the recipients of this</p> <p>14 e-mail that -- he says we will be working on</p> <p>15 the agreement and needed changes to get Mobil</p> <p>16 Loans into the process. You see that the last</p> <p>17 sentence in the first paragraph?</p> <p>18 A. Yes.</p> <p>19 Q. Do you remember anything about the -- up</p> <p>20 until now, we've just been talking about Plain</p> <p>21 Green and Great Plains Lending. Do you</p> <p>22 remember anything about the beginning of the</p> <p>23 purchase of the Mobil Loans debt, as well?</p> <p>24 A. If anything, I would be speculating.</p>	<p style="text-align: right;">Page 139</p> <p>1 Finance potentially put together, somebody was</p> <p>2 redlining their own -- without seeing it, I</p> <p>3 don't know what was being redlined.</p> <p>4 Q. Yeah, yeah, sure. I understand. Let's</p> <p>5 look at 81.</p> <p>6 - - -</p> <p>7 (Whereupon Exhibit P-81 was</p> <p>8 marked for identification.)</p> <p>9 - - -</p> <p>10 BY MR. ACKELSBURG:</p> <p>11 Q. Have you had a chance to review</p> <p>12 Plaintiff's Exhibit 82 -- 81?</p> <p>13 A. Is there a specific question?</p> <p>14 Q. Yeah, I just wanted to give you the time</p> <p>15 you needed to see what it is.</p> <p>16 A. Yeah, I know what it is.</p> <p>17 Q. What is it?</p> <p>18 A. It's a restated loan and sale agreement.</p> <p>19 It's an amended restated loan and sale</p> <p>20 agreement. It looks to me that maybe this is</p> <p>21 when the price changed from --</p> <p>22 Q. From 7 to 8.65 or 7 point something.</p> <p>23 This appears then to be the new agreement, as</p> <p>24 it applies to Plain Green, that was discussed</p>
<p style="text-align: right;">Page 138</p> <p>1 What I can say is Mobil Loans, before they</p> <p>2 started selling to us, we knew just based on</p> <p>3 whether it was feedback received from Brett or</p> <p>4 requests for us to provide, you know,</p> <p>5 onboarding documents or information that they</p> <p>6 had concerns, just with the idea of selling</p> <p>7 bad debt, which is not really anything that we</p> <p>8 would be concerned about.</p> <p>9 I mean it's somewhat typical</p> <p>10 in our industry where you might have an issuer</p> <p>11 that they're concentrated on the front end and</p> <p>12 feel that, you know, what we might get for</p> <p>13 selling the debt may not be worth the more</p> <p>14 time it's going to take, you know, to spend,</p> <p>15 maybe they don't have expertise at. Again,</p> <p>16 I'm speculating on all that. But it's fairly</p> <p>17 typical in our industry that somebody may have</p> <p>18 concerns with just selling debt. So I'm</p> <p>19 reading into that.</p> <p>20 Another question I would have</p> <p>21 is, for you, in the attachment, referring to</p> <p>22 what I believe is a power point, and your</p> <p>23 comment about redline is really within that</p> <p>24 power point. So whatever power point, Think</p>	<p style="text-align: right;">Page 140</p> <p>1 in the prior e-mail, that was being discussed,</p> <p>2 right?</p> <p>3 MR. DAUGHERTY: Object to</p> <p>4 form.</p> <p>5 THE WITNESS: The 8.65, it</p> <p>6 looks like it was around that timeframe and</p> <p>7 ultimately through negotiations that's what</p> <p>8 both parties agreed on.</p> <p>9 BY MR. ACKELSBURG:</p> <p>10 Q. I notice that there is some additions to</p> <p>11 this agreement that I didn't see in the</p> <p>12 earlier ones. I'm going to point you to the</p> <p>13 Bates number in the lower right-hand corner to</p> <p>14 386418 and 9.</p> <p>15 Let's just go to -- let's</p> <p>16 start with 417. It's a Schedule A. Do you</p> <p>17 see there's a Schedule A attached to this one?</p> <p>18 It starts at 386417?</p> <p>19 A. Yes.</p> <p>20 Q. Is this -- this schedule, is this --</p> <p>21 have you ever seen -- are you familiar with</p> <p>22 this attachment to the -- is this unique?</p> <p>23 Have you ever seen this before?</p> <p>24 A. I don't know that I've ever seen it, you</p>

<p style="text-align: right;">Page 141</p> <p>1 know, structured quite like this. If I recall 2 at this time, the industry itself was 3 migrating into what we call a compliance 4 management system. It was a time when it was 5 expected, that you don't just have a 6 compliance function, that you actually have a 7 compliance officer and you actually have a 8 documented, you know, compliance management 9 system. 10 I don't know that these were 11 ever documented requirements from the Federal 12 level, but they were being spoke of and it was 13 really something that the industry changed to 14 at the same point in time we were requiring 15 our agencies to provide us with a document 16 management system -- not a document -- a 17 compliance management system. 18 As I look at this, it appears 19 to me that this was when Plain Green, you 20 know, wanted to step up the game as it related 21 to oversight to, you know, just compliance and 22 ensure that NCA, us, understand that it would 23 agree to making sure that we had processes and 24 procedures in place to meet the expectation,</p>	<p style="text-align: right;">Page 143</p> <p>1 MR. DAUGHERTY: Object to 2 form. 3 BY MR. ACKELSBURG: 4 Q. Am I right? 5 A. You're correct. 6 Q. It has the same 8.65 percent price, 7 right? 8 A. Yes. 9 Q. And it has that same Schedule A, as 10 well, right? 11 A. Correct. 12 Q. So the same Schedule A that's -- other 13 than the different names for, it looks like on 14 this copy the Great Plains is blank. But 15 putting aside the seller contact name on the 16 third page of Schedule A, we're looking at two 17 identical documents, correct? 18 MR. DAUGHERTY: Object to 19 form. 20 THE WITNESS: Correct. 21 BY MR. ACKELSBURG: 22 Q. Now on these two Schedule A's, we start 23 from the top, it says: Agencies to be fully 24 onboarded within 60 days of the effective</p>
<p style="text-align: right;">Page 142</p> <p>1 not only of them but ourselves, as well. 2 Q. What makes you think that was coming 3 from Plain Green as opposed to Think Finance? 4 A. Looking at the documents, it's a Plain 5 Green contract, the CEO of Plain Green signed 6 them. They would have been delivered through 7 Horrocks, but -- 8 Q. Why don't we look at the next document 9 with this one, see if you come to the same 10 conclusion. This will be P-82. This, I 11 think, is equivalent document for Great Plains 12 Lending. 13 - - - 14 (Whereupon Exhibit P-82 was 15 marked for identification.) 16 - - - 17 MR. SHELDON: For the record, 18 unless I am missing a signature page, it 19 doesn't look like this document has been 20 executed. 21 BY MR. ACKELSBURG: 22 Q. Exhibit-82 is the -- what's labeled the 23 execution copy of the equivalent document for 24 Great Plains; am I right?</p>	<p style="text-align: right;">Page 144</p> <p>1 date. And then it lists three companies: 2 Account Discovery Systems, Kramer and 3 Associates, RJA Capital and Zenith Financial 4 Network. These are companies you're familiar 5 with? 6 A. Yes. 7 Q. What's the nature of the service 8 provided by these companies and to whom? 9 A. These would be services provided to NCA, 10 these would be those agencies -- outsourced 11 agencies we'd have contracts with, we place 12 paper. They work it for a fee. 13 Q. So this is, as you described before, 14 these are effectively collectors hired by NCA 15 to collect for NCA on debt that NCA owns? 16 A. Correct. 17 Q. And these two contracts, the Plain Green 18 and the Great Plains Lending contracts specify 19 that those are -- effectively that those are 20 the only agencies you can use, right? 21 MR. DAUGHERTY: Object to 22 form. 23 MR. SHELDON: Objection. 24 BY MR. ACKELSBURG:</p>

<p style="text-align: right;">Page 145</p> <p>1 Q. That's the intent of this, right?</p> <p>2 A. So the intent is that any third party</p> <p>3 agency besides National Credit Adjusters that</p> <p>4 would work the accounts must be approved and</p> <p>5 fully vetted, not only by NCA but by the</p> <p>6 seller, the issuer.</p> <p>7 Q. And both of them identify the seller's</p> <p>8 servicer as Gio Rodriguez and Think Finance,</p> <p>9 correct?</p> <p>10 A. Correct.</p> <p>11 Q. Is that someone you know, Gio Rodriguez,</p> <p>12 do you remember him?</p> <p>13 A. I do remember him. I want to say</p> <p>14 vaguely, but I do remember Gio.</p> <p>15 Q. What was his role with regard to the</p> <p>16 Plain Green and Great Plains contracts?</p> <p>17 MR. DAUGHERTY: Objection to</p> <p>18 form.</p> <p>19 THE WITNESS: I don't know</p> <p>20 what his particular role with regard to the</p> <p>21 contracts. Here it's noting him as the seller</p> <p>22 servicer contact.</p> <p>23 BY MR. ACKELSBERG:</p> <p>24 Q. How did you know him?</p>	<p style="text-align: right;">Page 147</p> <p>1 Some of the documents you're seeing, probably</p> <p>2 Lori Bates. She has changed last names. But</p> <p>3 that's what the point of them coming to</p> <p>4 Hutchinson would have been.</p> <p>5 Q. So you remember this trip where Think</p> <p>6 Finance came with some representatives of</p> <p>7 Plain Green, right?</p> <p>8 A. Yes.</p> <p>9 Q. Do you remember who from Plain Green was</p> <p>10 there?</p> <p>11 A. The initial trip, I believe it was Greg</p> <p>12 Hilliard. And there was, I believe a gal that</p> <p>13 came with him, I can't remember her name. But</p> <p>14 I believe she was from the tribe. Pardon me,</p> <p>15 but I just don't remember her name. I do</p> <p>16 remember she was learning and the purpose of</p> <p>17 her being part of the visit was to grow and</p> <p>18 understand exactly how these visits go.</p> <p>19 Q. Bobbi Jo Favel, does that sound</p> <p>20 familiar?</p> <p>21 A. It sounds familiar. I can't say for</p> <p>22 sure that was who it was.</p> <p>23 Q. Did you ever have a similar meeting with</p> <p>24 Great Plains?</p>
<p style="text-align: right;">Page 146</p> <p>1 A. I knew him -- so when Plain Green came</p> <p>2 and did a site visit of NCA, they were</p> <p>3 accompanied by, I believe Gio, as well as</p> <p>4 Kevin Banks initially. I think the very first</p> <p>5 site visit that was conducted.</p> <p>6 Q. What timeframe are we talking about?</p> <p>7 A. It would have been after this contract.</p> <p>8 I would expect shortly after it. I can't</p> <p>9 specifically say.</p> <p>10 Q. And would that have been the first time</p> <p>11 that you actually saw face-to-face anyone from</p> <p>12 the tribal entities?</p> <p>13 A. I believe so.</p> <p>14 Q. They were with Gio Rodriguez and Kevin</p> <p>15 Banks from Think Finance?</p> <p>16 A. With -- it was a site visit. It's</p> <p>17 typical in what we do. Both parties came,</p> <p>18 yes. So whether or not the folks from Plain</p> <p>19 Green were with Gio and Kevin or Kevin and Gio</p> <p>20 was with the folks from Plain Green, they all</p> <p>21 came to Hutchinson and we went through a</p> <p>22 compliance management presentation.</p> <p>23 At that time it would have</p> <p>24 been delivered, I believe by Lori Patnode.</p>	<p style="text-align: right;">Page 148</p> <p>1 A. I don't recall having a meeting with</p> <p>2 Great Plains, no.</p> <p>3 Q. Do you remember anyone at NCA ever</p> <p>4 meeting anybody from Great Plains?</p> <p>5 A. I personally don't remember meeting</p> <p>6 anybody from Great Plains, no.</p> <p>7 Q. Do you remember seeing anyone from Great</p> <p>8 Plains on the premises?</p> <p>9 A. I do not, no.</p> <p>10 Q. And that's even post -- you mentioned</p> <p>11 when the tribes were taking things over more</p> <p>12 themselves, like in 2014, you didn't see</p> <p>13 anyone from Great Plains then either?</p> <p>14 MR. DAUGHERTY: Object to</p> <p>15 form.</p> <p>16 THE WITNESS: No. What I</p> <p>17 will say is, we have had other products over</p> <p>18 the course of time that they did come on site.</p> <p>19 We, through the expectations of really the</p> <p>20 onboarding, as well as compliance management</p> <p>21 overview, we would be providing and still do</p> <p>22 to this day, on a weekly basis, monthly basis,</p> <p>23 documentation of all of our complaints, as</p> <p>24 well as provide access to Great Plains, Mobil,</p>

<p style="text-align: right;">Page 149</p> <p>1 Plain Green, provide them access to their</p> <p>2 information to show them where every single</p> <p>3 one of their accounts is at, time give them a</p> <p>4 report to show a number of attempts, different</p> <p>5 things like that.</p> <p>6 It's just a very well rounded</p> <p>7 summary of what was happening on their</p> <p>8 accounts, as well as if we had a complaint</p> <p>9 from a consumer. We would have that</p> <p>10 investigated internally. A summary would be</p> <p>11 prepared by our compliance department. That</p> <p>12 would be provided to a company, the complaint</p> <p>13 log. And we would receive questions from</p> <p>14 associates at Great Plains.</p> <p>15 Right, wrong or in different,</p> <p>16 that was the relationship with Great Plains</p> <p>17 and I don't recall ever seeing them on site.</p> <p>18 BY MR. ACKELSBURG:</p> <p>19 Q. Did you ever meet anyone from Plain</p> <p>20 Greens off site?</p> <p>21 MR. DAUGHERTY: Objection to</p> <p>22 form.</p> <p>23 MR. SHELDON: Object to form.</p> <p>24 THE WITNESS: Off site in</p>	<p style="text-align: right;">Page 151</p> <p>1 speaking to is both federal and state</p> <p>2 regulatory training. And I specifically</p> <p>3 remember we contracted with a company called</p> <p>4 FIS, which provides not only the training, but</p> <p>5 the testing, as well. It's very widely</p> <p>6 utilized. And that's what we put in place on</p> <p>7 a semi-annual basis.</p> <p>8 Q. And the contract also required weekly</p> <p>9 call monitoring?</p> <p>10 A. Yes, we had and have what we call a</p> <p>11 quality assurance department. They would</p> <p>12 listen to calls, collective calls and grade</p> <p>13 them without bias. Each collector had to have</p> <p>14 "X" number of calls graded per week, I believe</p> <p>15 it's three, three to five.</p> <p>16 Q. So this is monitoring that would be done</p> <p>17 internally?</p> <p>18 A. We would do that internally. And in</p> <p>19 addition we would take -- I don't know if it</p> <p>20 was those calls that were reviewed by us, I</p> <p>21 don't believe so. But a random -- I think 50</p> <p>22 calls related to the specific accounts that</p> <p>23 each contracts with.</p> <p>24 For example, we wouldn't send</p>
<p style="text-align: right;">Page 150</p> <p>1 terms of away from our office or just anywhere</p> <p>2 in general?</p> <p>3 BY MR. ACKELSBURG:</p> <p>4 Q. Yes.</p> <p>5 A. Not to my knowledge, no.</p> <p>6 Q. So you've had no face-to-face contact</p> <p>7 with anyone from Great Plains that you can</p> <p>8 recall?</p> <p>9 A. The last question you said Plain Green,</p> <p>10 were you referring to --</p> <p>11 Q. I'm sorry, Great Plains.</p> <p>12 A. No.</p> <p>13 Q. Schedule A also references some training</p> <p>14 that is supposed to happen. Employee</p> <p>15 contractors must complete seller mandated</p> <p>16 training, right.</p> <p>17 So my question is, who is</p> <p>18 doing the mandating and the training?</p> <p>19 MR. SHELDON: Object to form.</p> <p>20 BY MR. ACKELSBURG:</p> <p>21 Q. Why don't we just ask the training. Who</p> <p>22 was expected to do the training here? It</p> <p>23 says: Seller mandated training.</p> <p>24 A. So I believe what this is ultimately</p>	<p style="text-align: right;">Page 152</p> <p>1 calls from Plain Green to Great Plains or vice</p> <p>2 versa or to any other issuer. We would have a</p> <p>3 third party disclosure problem. But we would</p> <p>4 provide SFD&P access to where those calls</p> <p>5 could be listened to by the tribes or any</p> <p>6 other issuer that requested that.</p> <p>7 Q. It also references weekly dialer call</p> <p>8 reporting and complaint monitoring. Are these</p> <p>9 other sort of compliance activities that would</p> <p>10 be done internally within NCA?</p> <p>11 A. Yes.</p> <p>12 Q. And it sounds like these -- all of these</p> <p>13 monitoring activities applied to the</p> <p>14 outsourced agencies, as well. So how would</p> <p>15 that -- how would the agencies be monitored?</p> <p>16 A. So the agencies -- they would have the</p> <p>17 same requirements like you stated. They would</p> <p>18 provide us with phone calls to drop directly</p> <p>19 to the issuers. You know, we would request --</p> <p>20 complaint monitoring was a big one with our</p> <p>21 agencies. They were required to fill out a</p> <p>22 complaint log and provide them to us.</p> <p>23 Q. So NCA would effectively be monitoring</p> <p>24 the agencies --</p>

<p style="text-align: right;">Page 153</p> <p>1 A. Correct.</p> <p>2 Q. Is that the way it worked?</p> <p>3 A. Yes.</p> <p>4 Q. Who would be monitoring NCA?</p> <p>5 A. We monitor ourselves.</p> <p>6 Q. Were you accountable -- was NCA</p> <p>7 accountable at all to Think Finance and to the</p> <p>8 people like Gio Rodriguez over there?</p> <p>9 A. In the beginning, early on in the</p> <p>10 contract, as we talked about earlier, we would</p> <p>11 receive questions from Gio or Kevin, as well</p> <p>12 as from folks like Greg at Plain Green or</p> <p>13 folks at both Great Plains and Mobil Loans, as</p> <p>14 well.</p> <p>15 To be honest with you, we</p> <p>16 executed quite well on what we were supposed</p> <p>17 to do and everything was dumped in a secure</p> <p>18 location. Brett Horrocks, I believe, had</p> <p>19 access to we'd notify by e-mail that whatever</p> <p>20 documents or phone calls et cetera were there,</p> <p>21 and to my knowledge, I don't recall being</p> <p>22 called or told. Maybe it's just an area that</p> <p>23 I wasn't notified. I'm sure that there was</p> <p>24 times where we didn't provide something, and</p>	<p style="text-align: right;">Page 155</p> <p>1 BY MR. ACKELSBURG:</p> <p>2 Q. Yes. 83, 84 and 85. Just so we're all</p> <p>3 on the same page, 83 is an e-mail, TF-PA</p> <p>4 610807. And then there are two versions of --</p> <p>5 there are Mobil Loan agreements with different</p> <p>6 Bates 565648 and that's P-84. P-85 is 272605.</p> <p>7 The first one is marked execution copy with a</p> <p>8 date of November 26th, 2013. The second one</p> <p>9 is called a final copy with a different date</p> <p>10 of March 12th, 2014.</p> <p>11 Also note that the first</p> <p>12 contract is between MBL, Mobil Loans, and NCA.</p> <p>13 And the second contract is between Mobil Loans</p> <p>14 and Level Financial.</p> <p>15 All right, let's start with</p> <p>16 the e-mail -- and again, this is an e-mail</p> <p>17 that is Brett Horrocks communicating with</p> <p>18 Think Finance. It's an e-mail chain. And the</p> <p>19 subject of e-mail chain is the Mobil Loan debt</p> <p>20 sale.</p> <p>21 A. Okay.</p> <p>22 Q. Yes. So my first question is whether</p> <p>23 you know any -- besides Brett Horrocks and Gio</p> <p>24 Rodriguez who you've already mentioned, do you</p>
<p style="text-align: right;">Page 154</p> <p>1 they're looking for it. I don't know who was</p> <p>2 notifying us at that time. And it wouldn't</p> <p>3 surprise me if we would get a notification</p> <p>4 from a Kevin or from a Gio or directly from</p> <p>5 Greg. I don't know that there was a</p> <p>6 systematic expectation on our side.</p> <p>7 Q. Okay. You have mentioned a few times</p> <p>8 Mobil Loans. They did eventually -- there</p> <p>9 eventually was an agreement that covered Mobil</p> <p>10 Loans. We haven't looked at that yet. I</p> <p>11 wanted to show you what I think are the Mobil</p> <p>12 Loan documents and ask you whether those are</p> <p>13 what I think they are.</p> <p>14 - - -</p> <p>15 (Whereupon Exhibits P-83 through</p> <p>16 P-85 was marked for identification.)</p> <p>17 - - -</p> <p>18 BY MR. ACKELSBURG:</p> <p>19 Q. I will give you Exhibit 83 and 84. I'm</p> <p>20 sorry, I'm mixing up -- hold on. I think I</p> <p>21 numbered it wrong. I am going to give you</p> <p>22 three documents.</p> <p>23 MR. DAUGHERTY: Irv, are we</p> <p>24 done with 80, 81 and 82 for the time being?</p>	<p style="text-align: right;">Page 156</p> <p>1 know any of the other individuals at Think</p> <p>2 Finance who are in these e-mails? Have you</p> <p>3 had any interactions with them or know who</p> <p>4 they are?</p> <p>5 A. They all -- Ranga sounds familiar to me.</p> <p>6 So does Carrie, it's hard for me to place</p> <p>7 either one.</p> <p>8 Q. I mean it's fine if you don't remember.</p> <p>9 A. Yeah, the names sound familiar.</p> <p>10 Q. Okay. That's fine. Now there's</p> <p>11 reference in the e-mail to a Think Finance</p> <p>12 meeting with NCA about Mobil Loans. Do you</p> <p>13 remember that happening back in October of</p> <p>14 2013?</p> <p>15 MR. DAUGHERTY: Irv, can you</p> <p>16 be specific about which portion of the five</p> <p>17 page e-mail, four or five-page e-mail you're</p> <p>18 referencing there?</p> <p>19 MR. SHELTON: Is the witness</p> <p>20 on this e-mail chain anywhere?</p> <p>21 MR. ACKELSBURG: No, he's</p> <p>22 not. We established that in the beginning.</p> <p>23 MR. DAUGHERTY: I see where</p> <p>24 you are, the one ending 809.</p>

<p style="text-align: right;">Page 157</p> <p>1 BY MR. ACKELSBURG:</p> <p>2 Q. Yeah.</p> <p>3 A. Yeah, it's stating we met with NCA</p> <p>4 today. I don't know whether that's via phone</p> <p>5 or maybe you have another document.</p> <p>6 Q. It could have been a phone meeting. I</p> <p>7 guess my question is, do you remember there</p> <p>8 being issues about the Mobil Loan sale? I</p> <p>9 remember you testified previously that there</p> <p>10 was some hesitation, you remember, from them</p> <p>11 doing a debt sale at all, right?</p> <p>12 A. Yes, that's correct. And reading into</p> <p>13 this -- this is the first time for -- I'd say</p> <p>14 prepping, as well as today, is the first time</p> <p>15 I had seen, you know, this e-mail. I don't</p> <p>16 recall specific discussions as an executive</p> <p>17 team or about the topics here, as far as</p> <p>18 leasing account, ownership, you know, for</p> <p>19 Mobil Loans, placement options, et cetera.</p> <p>20 That doesn't mean that it</p> <p>21 didn't take place. I am sure it took place.</p> <p>22 Q. That's fine. I just was curious whether</p> <p>23 you had any recollection of these meetings or</p> <p>24 anything more than -- you remember that Mobil</p>	<p style="text-align: right;">Page 159</p> <p>1 earlier.</p> <p>2 BY MR. ACKELSBURG:</p> <p>3 Q. It has no practical consequence in terms</p> <p>4 of how you're going to work the account,</p> <p>5 right, whether it's purchased by NCA or later</p> <p>6 by Level?</p> <p>7 MR. DAUGHERTY: Object to</p> <p>8 form.</p> <p>9 THE WITNESS: Consequential,</p> <p>10 no. A collector might have to say that this</p> <p>11 account is owned by Level Financial as opposed</p> <p>12 to NCA.</p> <p>13 BY MR. ACKELSBURG:</p> <p>14 Q. I see. I see.</p> <p>15 A. Looking at this contract, I would say</p> <p>16 2013 or thereabouts.</p> <p>17 Q. I apologize to the extent I've been</p> <p>18 provided copies without signatures, but the</p> <p>19 fact that one -- does the fact that one is</p> <p>20 with NCA and one is with Level, suggest that</p> <p>21 they actually both did happen?</p> <p>22 MR. DAUGHERTY: Object to</p> <p>23 form.</p> <p>24 THE WITNESS: I can tell you</p>
<p style="text-align: right;">Page 158</p> <p>1 Loan is being reluctant to sell, but you don't</p> <p>2 remember more to it than that?</p> <p>3 A. Yeah, that's right.</p> <p>4 Q. That's fine?</p> <p>5 A. That's as easy to put it as you can.</p> <p>6 Q. Looking at these agreements, can you</p> <p>7 determine or from your memory, when it is that</p> <p>8 NCA started buying the Mobil Loans debt?</p> <p>9 A. When?</p> <p>10 Q. Yes.</p> <p>11 MR. SHELDON: Are you</p> <p>12 including Level Financial in your reference to</p> <p>13 NCA?</p> <p>14 MR. ACKELSBURG: Yeah, sure.</p> <p>15 He said that --</p> <p>16 MR. SHELDON: Right, it's</p> <p>17 just one of the agreements says NCA, and one</p> <p>18 of the agreements says Level Financial.</p> <p>19 MR. ACKELSBURG: It's kind of</p> <p>20 the same thing operationally, right?</p> <p>21 MR. DAUGHERTY: Object to</p> <p>22 form.</p> <p>23 THE WITNESS: Yes. It's a</p> <p>24 special purchase entity that was discussed</p>	<p style="text-align: right;">Page 160</p> <p>1 that we bought Mobil Loans, as well as Level.</p> <p>2 BY MR. ACKELSBURG:</p> <p>3 Q. And that you were buying them as of the</p> <p>4 end of 2013, does that sound about right?</p> <p>5 A. Yeah, to the best of my recollection,</p> <p>6 yes.</p> <p>7 Q. By the way, these agreements have the</p> <p>8 same Schedule A that the Plain Green and Great</p> <p>9 Plains Lending have, don't they?</p> <p>10 MR. DAUGHERTY: Object to</p> <p>11 form.</p> <p>12 THE WITNESS: They look very</p> <p>13 similar. It looks like one of the Mobil Loans</p> <p>14 is redrafted. But from just an expectation</p> <p>15 requirement standpoint, I didn't go through</p> <p>16 word by word.</p> <p>17 BY MR. ACKELSBURG:</p> <p>18 Q. They look pretty similar?</p> <p>19 A. At quick glance, they look very similar.</p> <p>20 Q. Schedule A, would these have been --</p> <p>21 I'll withdrawal the question.</p> <p>22 So the same 8.65 percent</p> <p>23 price, Gio Rodriguez is the same contact,</p> <p>24 right?</p>

<p style="text-align: right;">Page 161</p> <p>1 MR. DAUGHERTY: Object to 2 form. 3 THE WITNESS: Based on these 4 documents and the Schedule A, Gio is listed as 5 the servicer contact. 6 MR. DAUGHERTY: Hold on. I 7 think that's actually not correct with respect 8 to Exhibit-85. 9 MR. ACKELSBURG: 86 has him 10 on there. 11 MR. DAUGHERTY: Tyler, if 12 you're asked a question about what does the 13 document say, I'd ask you to actually take a 14 quick look at it before you agree with what 15 opposing counsel suggests. 16 BY MR. ACKELSBURG: 17 Q. I don't want there to be any confusion. 18 Let's look at TF-PA. We're in 84. We're in 19 Exhibit-84, TF-PA, 565669, towards the back. 20 Services contact is who? 21 A. Gio Rodriguez. 22 Q. At Think Finance? 23 A. Yes. I think the clarification that was 24 needed on Exhibit-85, the service contact was</p>	<p style="text-align: right;">Page 163</p> <p>1 agency that you have that previously -- at one 2 point was an NCA agency, right? 3 A. Correct. 4 Q. I think you told us, and by the way, the 5 signator for this company, National Recovery 6 Services, on page four of the agreement, Brad 7 DeCray, he actually later became an employee 8 of NCA, correct? 9 A. That's correct. 10 Q. And reported to you? 11 A. That is correct. 12 Q. So I believe you explained in your 13 previous testimony that the Ottawa office was 14 a collection company that was ultimately 15 acquired? 16 A. Correct. 17 Q. Right. So would this be from the period 18 before the acquisition? 19 A. This document? 20 Q. Yes. 21 A. Yes, this would have been prior to the 22 acquisition of the Ottawa office. 23 Q. So it would appear that at this point in 24 time, it looks like there was collection of</p>
<p style="text-align: right;">Page 162</p> <p>1 actually Kevin Banks, seller's service 2 contact. 3 Q. Right, so is it different -- but it's 4 still Think Finance, it's just Kevin rather 5 than Gio. 6 A. Gio. 7 - - - 8 (Whereupon Exhibit P-86 was 9 marked for identification.) 10 - - - 11 BY MR. ACKELSBURG: 12 Q. Okay. I am going to show you what has 13 been marked Plaintiff's Exhibit 86. This is 14 TF-PA, the document beginning at TF-PA 557226. 15 A. Okay. 16 Q. Do you have any idea what this is? 17 A. After reading it, I have an ideas of 18 what it is. I've never seen it before. It 19 looks like a First Party Collection Services 20 Agreement between Plain Green and National 21 Recovery Services, which is a Kansas Limited 22 Liability Company. 23 Q. And this signator, by the way, the 24 address is the Ottawa, Kansas address of the</p>	<p style="text-align: right;">Page 164</p> <p>1 loans that were still in the portfolio owned 2 by Plain Green, as opposed to NCA? This is 3 before -- these were loans that were being 4 worked by -- according to this agreement, by 5 Plain Green, right? 6 MR. DAUGHERTY: Object to 7 form. 8 BY MR. ACKELSBURG: 9 Q. It was Plain Green Loans being worked by 10 National Recovery Services? 11 A. That's what the agreement suggests, yes. 12 Q. Okay. 13 - - - 14 (Whereupon Exhibit P-87 was 15 marked for identification.) 16 - - - 17 BY MR. ACKELSBURG: 18 Q. All right. Can you explain this e-mail? 19 We're looking at an NCA document, NCA-14894, 20 which we've labeled as Plaintiff's Exhibit 87. 21 MR. DAUGHERTY: Object, 22 vague. 23 THE WITNESS: Yeah, it looks 24 like an e-mail series discussing a compliance</p>

<p style="text-align: right;">Page 165</p> <p>1 meeting with NCA, at least the back. I don't 2 know if that's the attachment from the -- 3 BY MR. ACKELSBURG: 4 Q. Right, well I don't know either. It 5 looks like it's the last page of the 6 production. So it looks like there is some 7 discussions internally about a proposed agenda 8 for a compliance meeting that's to take place 9 in two days, right? Correct? 10 A. Yes, that's correct. 11 Q. You're basically approving the agenda, 12 right? 13 A. It looks that way, based on these 14 e-mails. That's why I was asking if this was 15 the actual attachment or if there was another 16 attachment. I find it odd that I responded 17 with simply, yes, this would be fine. This is 18 an e-mail forwarded from Shawn Gylling to me 19 with nothing written by Shawn and the first 20 e-mail being from Brett, but it's an agenda. 21 Q. It looks like -- it looks like Brad 22 forwarded a proposed agenda to -- Brett 23 forwarded -- Brett Horrocks forwarded a 24 proposed agenda to Brad, and it looks like it</p>	<p style="text-align: right;">Page 167</p> <p>1 a monthly or weekly call. 2 BY MR. ACKELSBURG: 3 Q. That's what it looks like this is. It 4 looks almost like maybe it's an Outlook invite 5 or something like that for a call, I don't 6 know. 7 A. Yeah, I would be speculating there, as 8 well. But there's a meeting obviously that 9 was scheduled here. I can't recall being on a 10 phone call on a monthly basis, but we did from 11 a compliant standpoint, Sarah Waggener and 12 Lori Bates Patnode would have been one to 13 handle a lot of those calls. 14 Q. These calls -- it looks like these calls 15 were between this group from NCA and a group 16 from Think Finance -- 17 MR. DAUGHERTY: Objection to 18 form. 19 BY MR. ACKELSBURG: 20 Q. That's what, at least, this meeting was, 21 right? 22 MR. DAUGHERTY: Objection to 23 form. 24 THE WITNESS: This meeting,</p>
<p style="text-align: right;">Page 166</p> <p>1 somehow got to Shawn, who is forwarding it to 2 you, correct? That's what it looks like. 3 A. That's what it looks like, yes. 4 Q. Now, were there, in fact, ongoing 5 compliance meetings as described in this 6 agenda? 7 A. I believe there was in the beginning. 8 Q. Is May 2013 the beginning? 9 A. Early on. 10 Q. I'm just trying to get a sense of your 11 labels, yeah. 12 A. Yeah, I consider that in the beginning, 13 probably because it's shortly after the new 14 contract site, Exhibit-A, with a laundry list 15 of expectations. 16 Q. And these are the kinds of meetings that 17 would take place to go over the items covered 18 in Exhibit-A in the sale agreements? 19 MR. DAUGHERTY: Objection, 20 mischaracterizes the document. 21 THE WITNESS: I don't know 22 whether this was an on-site meeting or whether 23 this was -- this particular document speaking 24 to a certain date, I do believe that there was</p>	<p style="text-align: right;">Page 168</p> <p>1 in particular, that's what the attendee list 2 is. Who was invited to other meetings, I 3 couldn't tell you. 4 BY MR. ACKELSBURG: 5 Q. You mention Gio and Ranga -- Gio -- you 6 had some dealings with Ranga, a familiar name. 7 What about Tammy and Tally, the other two 8 Think Finance people mentioned? 9 A. Tally, yes. I believe her last name was 10 Pleats. I think that she was the compliance 11 officer for Think Finance at that time, if I 12 am remembering correctly. 13 Q. So you do recall in that period of time 14 there being compliance calls between NCA and 15 Think Finance? 16 MR. DAUGHERTY: Object to 17 form. 18 THE WITNESS: I do. I do, 19 you know, looking at this e-mail and this 20 agenda, there was -- my recollection is that 21 there was some compliance calls when they 22 transitioned or whatnot, how often they were, 23 et cetera. It really wasn't, you know, what I 24 was responsible for at the time.</p>

<p style="text-align: right;">Page 169</p> <p>1 BY MR. ACKELSBURG:</p> <p>2 Q. But you knew these calls were happening?</p> <p>3 A. I knew that there was a higher level of</p> <p>4 expectation, just from an oversight standpoint</p> <p>5 in general and accountability factor to it</p> <p>6 from a speculative standpoint. With what I</p> <p>7 was doing, if I wanted to improve the efforts</p> <p>8 of a certain agenda, so to speak, I would have</p> <p>9 phone calls or I'd have meetings, et cetera,</p> <p>10 with the folks that needed to be there.</p> <p>11 That's I guess what I can say about that.</p> <p>12 Q. Were you ever a party to any compliance</p> <p>13 calls with Think Finance; or was this just in</p> <p>14 another area?</p> <p>15 A. I'm sure I was. I can't specifically</p> <p>16 remember specific conversations, so to speak.</p> <p>17 But dealing with the collection floor, et</p> <p>18 cetera, I believe I would have had to have</p> <p>19 been on, you know, some calls related to</p> <p>20 compliance.</p> <p>21 Q. Given the timeframe here, May of 2013,</p> <p>22 this would have been before Mobil Loans it</p> <p>23 looks like. So probably the subject would</p> <p>24 have been at this point in time mainly Plain</p>	<p style="text-align: right;">Page 171</p> <p>1 information that's being provided on a weekly,</p> <p>2 monthly basis is accurate, as well as full and</p> <p>3 complete as it relates to our complaints, the</p> <p>4 number of phone calls that we make, us being</p> <p>5 accountable to Schedule A, at some point you</p> <p>6 don't really need a weekly call, right.</p> <p>7 Q. Right. So to the extent that Think</p> <p>8 Finance developed growing confidence in NCA's</p> <p>9 compliance with Exhibit-A, there might have</p> <p>10 been less calls for these preaudit calls?</p> <p>11 MR. SHELDON: Object to form.</p> <p>12 MR. DAUGHERTY: Object to</p> <p>13 form.</p> <p>14 THE WITNESS: Think Finance,</p> <p>15 Brett, the tribes, if the call discontinued,</p> <p>16 whomever was on the call, both parties, it</p> <p>17 would have been because everybody was happy</p> <p>18 with the way things were functioning.</p> <p>19 BY MR. ACKELSBURG:</p> <p>20 Q. All right, but in this particular call,</p> <p>21 the agenda that you approved, there wasn't</p> <p>22 anyone from a tribe there, was there?</p> <p>23 A. No --</p> <p>24 MR. DAUGHERTY: Object to</p>
<p style="text-align: right;">Page 170</p> <p>1 Green and Great Plains Lending, right?</p> <p>2 MR. DAUGHERTY: Object to</p> <p>3 form.</p> <p>4 BY MR. ACKELSBURG:</p> <p>5 Q. Given the timeframe.</p> <p>6 A. You can make that assumption, yes.</p> <p>7 We've gone over the contracts. Mobil Loans</p> <p>8 here is late 2013. I'm certain that I think</p> <p>9 that's when we started buying it. This was</p> <p>10 prior to that.</p> <p>11 To say for exact that this</p> <p>12 particular meeting referenced in this e-mail</p> <p>13 was prior to the person at Mobil Loans, I</p> <p>14 don't want to commit to that.</p> <p>15 BY MR. ACKELSBURG:</p> <p>16 Q. Did there ever -- did this compliance</p> <p>17 meeting protocol continue through the years,</p> <p>18 2013, 2014, 2015?</p> <p>19 A. I don't believe so. If it did, I feel</p> <p>20 like I would have a better recollection of it</p> <p>21 actually happening. I don't believe that this</p> <p>22 example of a meeting continued into 2014, '15.</p> <p>23 It stopped at some point, but I do believe</p> <p>24 that part of that is due to -- if the</p>	<p style="text-align: right;">Page 172</p> <p>1 form.</p> <p>2 THE WITNESS: -- there is not.</p> <p>3 BY MR. ACKELSBURG:</p> <p>4 Q. In your reply to Shawn, you didn't say,</p> <p>5 well, maybe we should invite someone from the</p> <p>6 tribe there, did you?</p> <p>7 MR. SHELDON: Object to form.</p> <p>8 MR. DAUGHERTY: Object to</p> <p>9 form.</p> <p>10 THE WITNESS: No, I didn't.</p> <p>11 I'm not sure -- I don't know whether there was</p> <p>12 a time -- I say, yes, this will be fine.</p> <p>13 Approval to me is a very strong word. I don't</p> <p>14 know that I had authority to approve an agenda</p> <p>15 for a compliance meeting, as being set up.</p> <p>16 However, to answer your</p> <p>17 question, no, there is, to my knowledge,</p> <p>18 nobody from the tribes on this attendee list</p> <p>19 for the meeting scheduled for May 8th, 2013.</p> <p>20 BY MR. ACKELSBURG:</p> <p>21 Q. Do you see under -- on the agenda, it</p> <p>22 says compliance program update in bold?</p> <p>23 A. Yes.</p> <p>24 Q. And it talks about progress and items</p>

<p style="text-align: right;">Page 173</p> <p>1 identified during the site visit, do you see</p> <p>2 that?</p> <p>3 A. Yes.</p> <p>4 Q. Can you read the first item that was</p> <p>5 identified during the site visit?</p> <p>6 A. Read it out loud?</p> <p>7 Q. Yes.</p> <p>8 A. No reference to TF-N Systems and</p> <p>9 training materials. All products referred by</p> <p>10 lender.</p> <p>11 Q. Right. Do you recall this topic as</p> <p>12 being of concern to Think Finance?</p> <p>13 A. I don't know -- yes, concern, not just</p> <p>14 to Think Finance, I think to really all</p> <p>15 parties involved. So you remember the</p> <p>16 relationship started with the purchase of</p> <p>17 Think Cash. Sometimes changing collector</p> <p>18 habits is not as simple as it may sound.</p> <p>19 So migrating to Plain Green,</p> <p>20 Great Plains, in making sure that collectors</p> <p>21 aren't trying to refer to them as something</p> <p>22 different, because the actual loan wasn't</p> <p>23 completed or given by Plain Green or Great</p> <p>24 Plains. We deal with it outside of just</p>	<p style="text-align: right;">Page 175</p> <p>1 being a point that we need to make sure that</p> <p>2 we call the consumers and inform them of the</p> <p>3 originator, the issuer of the loan because</p> <p>4 that's what the consumer would recognize, et</p> <p>5 cetera. And that's who issued the loan. I do</p> <p>6 remember that.</p> <p>7 Q. How -- do you remember anyone in</p> <p>8 particular kind of communicating that to you?</p> <p>9 MR. SHELDON: Object to form.</p> <p>10 THE WITNESS: No, I don't,</p> <p>11 and it's partly, I think, because issuers -- I</p> <p>12 received this complaint from other issuers</p> <p>13 that we buy from. Because our collectors will</p> <p>14 -- consumers often times may have more than</p> <p>15 one loan, right. They have a loan from Plain</p> <p>16 Green and have another loan from a Rise or a</p> <p>17 Cash Net or a Sterling Jewelers. They could</p> <p>18 have multiple debts that NCA level</p> <p>19 subsidiaries just happen to buy.</p> <p>20 So through our quality</p> <p>21 assurance process, as well as providing</p> <p>22 issuers recordings of those phone calls, we</p> <p>23 did receive issues or complaints where our</p> <p>24 collector would foul up the conversation</p>
<p style="text-align: right;">Page 174</p> <p>1 tribal or other products where an issuer will,</p> <p>2 you know, be bought by somebody or --</p> <p>3 Q. Right, I understand.</p> <p>4 A. It's just making sure that our</p> <p>5 collectors aren't referring to an account by a</p> <p>6 different name.</p> <p>7 Q. Right, but I guess my question is, do</p> <p>8 you remember -- that's in general. I</p> <p>9 understand that, but I am really talking</p> <p>10 specifically about, you know, the relationship</p> <p>11 with Think Finance that NCA had through Brett,</p> <p>12 but --</p> <p>13 A. I do believe Think Finance wanted to</p> <p>14 make sure that we didn't refer to the accounts</p> <p>15 as anything but the originator or the current</p> <p>16 lender.</p> <p>17 Q. Do you remember Think Finance being</p> <p>18 hypersensitive to its name being used at all?</p> <p>19 MR. DAUGHERTY: Object to</p> <p>20 form.</p> <p>21 MR. SHELDON: Object to form.</p> <p>22 THE WITNESS: I don't</p> <p>23 remember them being hypersensitive. I</p> <p>24 remember that -- just like -- I remember it</p>	<p style="text-align: right;">Page 176</p> <p>1 because there were two accounts where they</p> <p>2 would name -- they would state the wrong name</p> <p>3 for the wrong account, wrong account number.</p> <p>4 And they would be hypersensitive in that</p> <p>5 scenario, that they don't want their loans to</p> <p>6 be misrepresented to the consumer.</p> <p>7 Q. Did you ever have -- do you recall ever</p> <p>8 having a consumer who you were collecting for</p> <p>9 that had Plain Green and a Great Plains</p> <p>10 Lending account?</p> <p>11 A. I don't. I don't recall. I don't know</p> <p>12 whether it happened, didn't happen. The main</p> <p>13 reason that we have consumers that link up, we</p> <p>14 call them links, account links, where they</p> <p>15 have debts with different originators, right.</p> <p>16 So it's not that abnormal.</p> <p>17 Q. Is that something that your data would</p> <p>18 also be able to retrieve?</p> <p>19 A. Absolutely, it's two different loans.</p> <p>20 Q. So I mean you'd be able to -- if I were</p> <p>21 to ask you how many Pennsylvania people had</p> <p>22 loans with Plain Green and Great Plains</p> <p>23 Lending or Mobil Loans, depending on how I</p> <p>24 framed the request, that's probably something</p>

<p style="text-align: right;">Page 177</p> <p>1 that your data people could figure out?</p> <p>2 MR. DAUGHERTY: Counsel, I'll</p> <p>3 allow the witness to answer the question, but</p> <p>4 I just want to make clear on the record that</p> <p>5 an affirmative response from the witness is</p> <p>6 not an indication that the company believes</p> <p>7 further recovery requests are appropriate at</p> <p>8 this time.</p> <p>9 BY MR. ACKELSBURG:</p> <p>10 Q. I understand.</p> <p>11 A. We can. I mean...</p> <p>12 Q. You could do that?</p> <p>13 A. Yes. We have record of all the accounts</p> <p>14 we bought.</p> <p>15 Q. You could sort them by lender, by</p> <p>16 person?</p> <p>17 A. I probably couldn't, but somebody could.</p> <p>18 Q. But someone who works for you could?</p> <p>19 A. Yeah.</p> <p>20 VIDEOTAPE OPERATOR: 2:30 off</p> <p>21 the record.</p> <p>22 - - -</p> <p>23 (Whereupon Exhibit P-88 was</p> <p>24 marked for identification.)</p>	<p style="text-align: right;">Page 179</p> <p>1 MR. DAUGHERTY: Object to the</p> <p>2 characterization of there being lots of</p> <p>3 attachments. There's one attachment listed</p> <p>4 that appears to be 22 to 23 pages long.</p> <p>5 BY MR. ACKELSBURG:</p> <p>6 Q. All right.</p> <p>7 A. Generally are you asking really what the</p> <p>8 attachment is?</p> <p>9 Q. Let's start with the general. What does</p> <p>10 all of this appear to be?</p> <p>11 A. It appears to me to be really a project</p> <p>12 tracking for a spreadsheet of a Schedule A, to</p> <p>13 make sure we are on top of meeting those</p> <p>14 expectations and obligations.</p> <p>15 Q. All of the expectations that were in the</p> <p>16 Schedule A's, attached to all the various sale</p> <p>17 agreements?</p> <p>18 A. Yes, that's what it appears to me what</p> <p>19 this is, the estimated due date and really the</p> <p>20 basis for the weekly discussion is what it</p> <p>21 appears. I'm making that assumption simply</p> <p>22 based on Lori Hess. Lori Hess is also Lori</p> <p>23 Bates and Lori Patnode. So... Stating that</p> <p>24 we'd like to defer the meetings for the 10th</p>
<p style="text-align: right;">Page 178</p> <p>1 VIDEOTAPE OPERATOR: 2:41, we're</p> <p>2 back on the record.</p> <p>3 BY MR. ACKELSBURG:</p> <p>4 Q. I will show you a few more documents</p> <p>5 connected to this compliance function. P-88,</p> <p>6 NCA document 14323. This document appears to</p> <p>7 deal with -- strike it. The last exhibit we</p> <p>8 looked at, 87 was about a compliance meeting</p> <p>9 that NCA had with Brett and the Think Finance</p> <p>10 people in May of 2013.</p> <p>11 A. Okay.</p> <p>12 Q. This one appears to be -- this appears</p> <p>13 to be about a compliance call two months later</p> <p>14 in July. Do you see that?</p> <p>15 A. I do.</p> <p>16 Q. The participants again are NCA people,</p> <p>17 Think Finance people and Brett Horrocks,</p> <p>18 right?</p> <p>19 A. That's what it appears to be, yes.</p> <p>20 Q. Now there were a lot of attachments to</p> <p>21 this one, and I was wondering if you could</p> <p>22 explain what we're looking at here. The</p> <p>23 attachments appear to have had something to do</p> <p>24 with the compliance call.</p>	<p style="text-align: right;">Page 180</p> <p>1 and 17th. There was a weekly meeting to track</p> <p>2 progress of completing the management system</p> <p>3 request that requested a Schedule A.</p> <p>4 Q. But you were not a participant in this</p> <p>5 discussion, because you were generally not in</p> <p>6 the compliance calls, right?</p> <p>7 A. That's correct.</p> <p>8 - - -</p> <p>9 (Whereupon Exhibit P-89 was</p> <p>10 marked for identification.)</p> <p>11 - - -</p> <p>12 THE WITNESS: The other thing</p> <p>13 I would like to point out, I don't know if</p> <p>14 this is just a working -- it looks like Lori</p> <p>15 was transitioning to whatever project plan she</p> <p>16 was using prior to that, tracking mechanism.</p> <p>17 I don't know if this was just the first view</p> <p>18 of it for her to -- from her to the group or</p> <p>19 whatnot. But I felt it important to bring</p> <p>20 that up.</p> <p>21 Q. So in the documents, Lori Hess and Lori</p> <p>22 Patnode, that's the same person. And there is</p> <p>23 another last name too.</p> <p>24 A. Bates.</p>

<p style="text-align: right;">Page 181</p> <p>1 Q. Bates, B-A-T-E-S?</p> <p>2 A. Yes.</p> <p>3 - - -</p> <p>4 (Whereupon Exhibit P-89 was</p> <p>5 marked for identification.)</p> <p>6 - - -</p> <p>7 BY MR. ACKELSBURG:</p> <p>8 Q. Let me -- this is an e-mail that you're</p> <p>9 included in. I did not include everything in</p> <p>10 the attachment. My questions are going to be</p> <p>11 fairly limited. So let's just start with the</p> <p>12 e-mail.</p> <p>13 A. Okay.</p> <p>14 Q. So in addition to there being periodic</p> <p>15 meetings, compliance meetings, there also were</p> <p>16 monthly reports that NCA did for Think</p> <p>17 Finance, right?</p> <p>18 A. Correct.</p> <p>19 Q. So on a monthly basis, it's sent to</p> <p>20 Think Finance data, collection data, data that</p> <p>21 NCA had, pertaining to the Think product, the</p> <p>22 various Think products, correct?</p> <p>23 A. That's what the e-mail states, yes.</p> <p>24 Q. But that's what you did, right?</p>	<p style="text-align: right;">Page 183</p> <p>1 MR. SHELDON: I'll just add</p> <p>2 there's an additional document that ends in</p> <p>3 DOCX.</p> <p>4 MR. ACKELSBURG: Yes, the TF</p> <p>5 memo that I didn't include, you're correct.</p> <p>6 BY MR. ACKELSBURG:</p> <p>7 Q. So am I right that the procedure was</p> <p>8 that NCA would send to Think on a monthly</p> <p>9 basis, at least during this point in time, the</p> <p>10 kind of data that you're seeing here on the</p> <p>11 three pages that I copied?</p> <p>12 A. Yeah, and I'm assuming more, as well. I</p> <p>13 mean I don't know what the other attachments</p> <p>14 were. I mean we were grading calls, right.</p> <p>15 Q. Right. If you look at -- what I've done</p> <p>16 is, I took a screen shot actually of before --</p> <p>17 before I actually printed out the three tabs.</p> <p>18 Do you see there's three tabs, dialer calls,</p> <p>19 complaints and QA trends?</p> <p>20 MR. DAUGHERTY: For the</p> <p>21 record, you created the second page of this</p> <p>22 document?</p> <p>23 MR. ACKELSBURG: Yes, I</p> <p>24 created the second page.</p>
<p style="text-align: right;">Page 182</p> <p>1 A. That's what we did.</p> <p>2 Q. By the Think products, at this point in</p> <p>3 time in May of 2014, we're referring to the</p> <p>4 three products we have been talking about,</p> <p>5 Plain Green, Great Plains Lending and Mobil</p> <p>6 Loans, correct?</p> <p>7 A. Correct, I'm looking at the attachments.</p> <p>8 Q. The attachment is actually a large --</p> <p>9 it's a spreadsheet. You're familiar with what</p> <p>10 this document looks like?</p> <p>11 A. In some form, yes. It has changed over</p> <p>12 the course of time, but...</p> <p>13 Q. Basically there's an Excel sheet that's</p> <p>14 prepared for each of the three Think products,</p> <p>15 correct? That's how it worked, right?</p> <p>16 MR. DAUGHERTY: I'll just</p> <p>17 object on the grounds -- I see that there are</p> <p>18 three XLSX attachments listed in the</p> <p>19 attachment line, but you haven't actually --</p> <p>20 at least you told us you haven't actually</p> <p>21 provided full copies of all of the</p> <p>22 spreadsheets.</p> <p>23 MR. ACKELSBURG: That's</p> <p>24 correct.</p>	<p style="text-align: right;">Page 184</p> <p>1 MR. SHELDON: Did you just</p> <p>2 call it dialer calls or dialer fails?</p> <p>3 MR. ACKELSBURG: Dialer</p> <p>4 fails, I think. I'm sorry.</p> <p>5 BY MR. ACKELSBURG:</p> <p>6 Q. So if I would open one of those</p> <p>7 spreadsheets on my computer, I would see that</p> <p>8 it would open up to one of the tabs, and then</p> <p>9 there's two other tabs?</p> <p>10 A. And one of the tabs was called dialer</p> <p>11 fails?</p> <p>12 Q. That's what it looks like. Are you</p> <p>13 familiar with this?</p> <p>14 A. Not in the context of dialer fails. I</p> <p>15 mean I'd be making an assumption that it would</p> <p>16 be -- I really don't know what -- I don't know</p> <p>17 what a dialer fail is.</p> <p>18 Q. I mean I don't either.</p> <p>19 A. Maybe a call that maybe didn't go</p> <p>20 through or something.</p> <p>21 Q. Okay. But apparently it was just a</p> <p>22 number that either Think Finance wanted or NCA</p> <p>23 thought Think Finance wanted?</p> <p>24 A. I really don't know. I don't know if</p>

<p style="text-align: right;">Page 185</p> <p>1 this was a report that was being -- what's the</p> <p>2 date?</p> <p>3 Q. I think it's May of 2014.</p> <p>4 A. It could be what somebody wanted or</p> <p>5 Think or the tribes wanted. I really don't</p> <p>6 know what the dialer fail is. The original</p> <p>7 comment that we produced reports related to</p> <p>8 our activity pertaining to Schedule A we did.</p> <p>9 Q. There is a tab on these spreadsheets</p> <p>10 called complaints?</p> <p>11 A. Yes.</p> <p>12 Q. Is that a report that you're familiar</p> <p>13 with?</p> <p>14 A. We have a lot of different tabs,</p> <p>15 probably spreadsheets. It's hard for me to</p> <p>16 answer that question. It's a tab and the</p> <p>17 example is --</p> <p>18 Q. Is this a metric that you're familiar</p> <p>19 with, complaint per 1,000 accounts?</p> <p>20 A. I'm not. To be honest it's not a metric</p> <p>21 I'm familiar with, it's not. But it's not a</p> <p>22 bad representation of what's happening.</p> <p>23 I would like to understand</p> <p>24 what's driving this, you know, what</p>	<p style="text-align: right;">Page 187</p> <p>1 (Whereupon Exhibit P-90 was</p> <p>2 marked for identification.)</p> <p>3 - - -</p> <p>4 BY MR. ACKELSBURG:</p> <p>5 Q. Okay. Let's look at next exhibit. This</p> <p>6 is NCA 1293 and NCA 4562 and NCA 1293. It's</p> <p>7 one exhibit with three pages from the</p> <p>8 production?</p> <p>9 A. I've got two.</p> <p>10 Q. Yes, yes, I found the other copy. Here</p> <p>11 it is. Here, it's two pages. Here is the</p> <p>12 missing copy.</p> <p>13 Again I apologize for that</p> <p>14 mistake. It's two pages, NCA-PA 1293 and</p> <p>15 NCA-PA 4562.</p> <p>16 There were -- I will</p> <p>17 represent to you, a lot of these in the</p> <p>18 production. And I'm just -- I took two out</p> <p>19 and I'm just going to ask you some questions</p> <p>20 about them.</p> <p>21 A. Okay.</p> <p>22 Q. Are you familiar with -- can you tell us</p> <p>23 what these are? It says entries and</p> <p>24 compliance logs. But what am I looking at</p>
<p style="text-align: right;">Page 186</p> <p>1 information was being provided to drive this</p> <p>2 report. Because I can't tell you whether it</p> <p>3 was a complaint from the consumer, from BBB,</p> <p>4 from Plain Green, the issuer or Think Finance,</p> <p>5 I don't know that.</p> <p>6 Q. So it sounds like this isn't -- these</p> <p>7 aren't reports that you're familiar with?</p> <p>8 A. Not me personally familiar with it, the</p> <p>9 way that -- on the internal front of managing</p> <p>10 the call centers, we had more of a gooey</p> <p>11 interface than -- (reporter clarification) a</p> <p>12 gooey interface -- reporting mechanism, based</p> <p>13 on the complaints that were received,</p> <p>14 documented, et cetera, as well as the quality</p> <p>15 assurance, call grading, they would all go</p> <p>16 into a database. It would be broken down by</p> <p>17 collector, by team, et cetera. That's what I</p> <p>18 use. That's what my managers, et cetera, use.</p> <p>19 But as far as if this was a</p> <p>20 request by an issuer, by Brett Horrocks or</p> <p>21 Tammy or Tally, I don't know. Schedule A just</p> <p>22 speaks to the oversight, right, and this could</p> <p>23 be part of that.</p> <p>24 - - -</p>	<p style="text-align: right;">Page 188</p> <p>1 here?</p> <p>2 A. Exactly that, it's just the log of which</p> <p>3 is capturing the complaints as they come in,</p> <p>4 compliance log. For example, the first one in</p> <p>5 the category dispute validity of debt, that</p> <p>6 could have came in the form of -- that was a</p> <p>7 complaint that was received back from Kramer</p> <p>8 and Associates, which is a third party agency.</p> <p>9 I mean it's a log of the</p> <p>10 complaints and different complaints that we</p> <p>11 get.</p> <p>12 Q. There are some codes that I'm not</p> <p>13 familiar with. So there's a column that says</p> <p>14 WD status?</p> <p>15 A. Yes.</p> <p>16 Q. Can you -- what does FFWD mean?</p> <p>17 A. So FFWD is just a status that represents</p> <p>18 that the account is forwarded to -- it's</p> <p>19 forwarded out for collection, outside of our</p> <p>20 agency, outside of our internal call center.</p> <p>21 Q. What does BHLTD stand for?</p> <p>22 A. We call that -- it's a status for</p> <p>23 accounts that are moved off of the floor that</p> <p>24 we put into an inactive status for multiple</p>

<p style="text-align: right;">Page 189</p> <p>1 reasons. It could be just a holding status</p> <p>2 that an account is in question.</p> <p>3 This one says category, cease</p> <p>4 communications. I would have to see the other</p> <p>5 underlying information related to cease</p> <p>6 communications to understand why I moved into</p> <p>7 a status that took it off the floor. If it's</p> <p>8 in a BHLTD status, it's not in an active</p> <p>9 collection status.</p> <p>10 Q. So no one should be getting a call then?</p> <p>11 A. No one should be getting a call if it's</p> <p>12 in -- no, we get consumers that will call us,</p> <p>13 but no outbound activities or letters.</p> <p>14 Q. Right. What do those letters stand for,</p> <p>15 do you know?</p> <p>16 A. I honestly don't know. I know that for</p> <p>17 me, just internally, like FFWD, in my mind</p> <p>18 that means forward. BHLTD I would always call</p> <p>19 it B-hold. I couldn't tell you why.</p> <p>20 Q. Okay. And then the last entry on the</p> <p>21 first page has another status, CDDP.</p> <p>22 A. That is cease and desist dispute, just</p> <p>23 another status that would be considered</p> <p>24 inactive.</p>	<p style="text-align: right;">Page 191</p> <p>1 A. No, I don't --</p> <p>2 Q. If you don't remember, that's fine.</p> <p>3 A. I don't remember, I mean these</p> <p>4 categories --</p> <p>5 Q. What about the next category on the</p> <p>6 second page, the second complaints, like IDSP.</p> <p>7 A. IDSP, in dispute, dispute validity of</p> <p>8 debt. I believe that that's another form of a</p> <p>9 dispute status along with the IC&D, along with</p> <p>10 the CDBP. I just -- I can't explain the</p> <p>11 difference in what they are right now.</p> <p>12 Q. So at this point in time, it looks like,</p> <p>13 at least with regard to the compliance log, if</p> <p>14 you look at the first page, it's a Great</p> <p>15 Plains compliance log from September of 2015.</p> <p>16 It looks like at this point in time, the</p> <p>17 compliance log is sent to various people at</p> <p>18 Think Finance, at NCA to Brett Horrocks, but</p> <p>19 now it also includes some e-mail addresses at</p> <p>20 the tribal entity, correct?</p> <p>21 A. Correct.</p> <p>22 Q. And you see that on the next page, as</p> <p>23 well, only it's a different tribal entity,</p> <p>24 right?</p>
<p style="text-align: right;">Page 190</p> <p>1 Q. What's the difference between CDP and</p> <p>2 BHLTD?</p> <p>3 A. Once an account goes to BHLTD, I believe</p> <p>4 that it normally would never become active</p> <p>5 again.</p> <p>6 Q. So does that mean that the Pennsylvania</p> <p>7 accounts that you talked about as being</p> <p>8 inactive, would probably be in your system as</p> <p>9 BHLTD's?</p> <p>10 A. They very well could be in the system as</p> <p>11 BHLTD's. The dispute, it's a different status</p> <p>12 because those accounts can go back --</p> <p>13 Q. You're just waiting for the dispute to</p> <p>14 be resolved, right?</p> <p>15 A. To be processed, to send them the</p> <p>16 original contract they signed and go through</p> <p>17 the waiting period, et cetera.</p> <p>18 Q. The next page has two other statuses,</p> <p>19 IC&D is one. Do you know what that is? Is</p> <p>20 that another form of cease and desist?</p> <p>21 A. I believe so. I am trying to recollect</p> <p>22 why it's a different form.</p> <p>23 Q. Could it be because of a different</p> <p>24 period of time, did you change codes?</p>	<p style="text-align: right;">Page 192</p> <p>1 A. Correct.</p> <p>2 Q. So tell me what the procedure is. Let</p> <p>3 me give you an example. A consumer -- let's</p> <p>4 just take the first one. There's a consumer</p> <p>5 with a Great Plains Lending loan who disputes</p> <p>6 the validity of the debt, at least that's the</p> <p>7 way it was entered in the system.</p> <p>8 That would go into the system</p> <p>9 by the person on the collection floor?</p> <p>10 A. No.</p> <p>11 Q. Who would categorize?</p> <p>12 A. It would be somebody on the compliance</p> <p>13 team in a support or administrative function.</p> <p>14 So what I can't tell you, whether there's a</p> <p>15 letter associated to this. I don't know just</p> <p>16 based on the log whether -- the form of how we</p> <p>17 were informed.</p> <p>18 Q. So source and attorney.</p> <p>19 A. So most likely it would have been a</p> <p>20 letter disputing the validity.</p> <p>21 Q. Let's not -- let's leave the attorney</p> <p>22 letters out of it for the moment. Why don't</p> <p>23 you just tell me how the system works. So a</p> <p>24 consumer -- let's say it's Plain Green or</p>

<p style="text-align: right;">Page 193</p> <p>1 Great Plains, the system is going to be the</p> <p>2 same except that it's a different lender,</p> <p>3 right?</p> <p>4 A. When you say system --</p> <p>5 Q. For handling a complaint?</p> <p>6 A. The process?</p> <p>7 Q. Yes. Let's say, we're talking about a</p> <p>8 Plain Green account, 2014?</p> <p>9 A. Okay.</p> <p>10 Q. The consumer in a conversation with a</p> <p>11 collector, either at NCA or at one of your</p> <p>12 agencies says, I don't believe I am legally</p> <p>13 obligated to pay this back.</p> <p>14 A. Are we role playing?</p> <p>15 Q. We kind of are, yeah. What's the system</p> <p>16 for handling that?</p> <p>17 A. If the collector is on the phone with</p> <p>18 the consumer and the consumer says --</p> <p>19 Q. I'm not going to pay because I don't</p> <p>20 think this loan is legal. How would you</p> <p>21 handle that complaint? You, as the CEO, is</p> <p>22 there an expectation that you have for how</p> <p>23 that would be handled?</p> <p>24 A. Yeah, you know, we get -- collections</p>	<p style="text-align: right;">Page 195</p> <p>1 Q. The collectors aren't supposed to be</p> <p>2 giving legal advice or legal assessment or</p> <p>3 anything like that, of course?</p> <p>4 A. Right.</p> <p>5 Q. What is the collector supposed to do</p> <p>6 then?</p> <p>7 A. They would put the account into a</p> <p>8 dispute status code, that account overnight</p> <p>9 would be swept off the floor into a dispute</p> <p>10 status. We have in our compliance or back</p> <p>11 office somebody that goes through. If we have</p> <p>12 the electronic or the original contract or</p> <p>13 whatnot on hand, they would find that. They</p> <p>14 would attach it to a letter informing the</p> <p>15 consumer that and provide the original</p> <p>16 contract that the consumer signed.</p> <p>17 So for a cease and desist</p> <p>18 everything has its own process because they</p> <p>19 can't be treated the same.</p> <p>20 Q. Does anything ever get -- at what point</p> <p>21 do complaints like that get referred back to</p> <p>22 the credit issuer?</p> <p>23 A. Well, they would be logged in this log</p> <p>24 if it was a dispute or a complaint or a cease</p>
<p style="text-align: right;">Page 194</p> <p>1 get told a lot of things. So they're trained</p> <p>2 to ask questions, you know, why do you believe</p> <p>3 that you don't owe this account? Why do you</p> <p>4 believe that this debt is not valid? Did you</p> <p>5 take the loan out?</p> <p>6 Like just try to get on a</p> <p>7 playing field that both the collector and the</p> <p>8 consumer may be agreeing on something. If</p> <p>9 they're able to do that and the consumer is</p> <p>10 still stating that they don't believe that</p> <p>11 this loan is valid or they don't believe that</p> <p>12 they owe the debt for whatever reason, that</p> <p>13 account would ultimately end up in a dispute,</p> <p>14 because that's a form of dispute and the</p> <p>15 collectors are aware of that.</p> <p>16 It's -- we don't ask our</p> <p>17 collectors to get into a legal discussion</p> <p>18 about whether or not they are right and the</p> <p>19 consumer is wrong and vice versa. I figure</p> <p>20 that would only create a lot of problems for a</p> <p>21 lot of people. Does that answer your</p> <p>22 question?</p> <p>23 Q. Well, part of it. So --</p> <p>24 A. The process.</p>	<p style="text-align: right;">Page 196</p> <p>1 communications. If it was a more intense</p> <p>2 complaint, so to speak, I don't know how to</p> <p>3 describe that. But in collections, things</p> <p>4 like dispute and cease and desist are pretty</p> <p>5 regular and normal.</p> <p>6 That's one way that a</p> <p>7 consumer may feel like they either might be</p> <p>8 able to get out of it. In fact, there's</p> <p>9 company's out there that are hired to send</p> <p>10 dispute letters to collection agencies like</p> <p>11 us, over and over and over again with the</p> <p>12 intent of the collection agency not responding</p> <p>13 to that dispute letter and ultimately</p> <p>14 requiring the owner of the debt to remove it</p> <p>15 from credit bureau.</p> <p>16 My only point with that is,</p> <p>17 stating that disputes and cease and desist and</p> <p>18 those types of things are not abnormal for</p> <p>19 collectors on a day to day basis to deal with.</p> <p>20 So we have a process.</p> <p>21 Do we inform every issuer how</p> <p>22 many disputes that we had yesterday? I can't</p> <p>23 say that we do. If we identified a trend that</p> <p>24 was, you know, a higher volume of disputes or</p>

<p style="text-align: right;">Page 197</p> <p>1 fraud accounts, et cetera, we would absolutely</p> <p>2 notify the issuer because there's something</p> <p>3 wrong, right.</p> <p>4 Q. Let me be more specific. At some point</p> <p>5 NCA sent all of the Plain Green, Great Plains</p> <p>6 Lending and Mobil Loans for Pennsylvania back</p> <p>7 to Think Finance, right?</p> <p>8 MR. DAUGHERTY: Objection to</p> <p>9 form.</p> <p>10 BY MR. ACKELSBURG:</p> <p>11 Q. That happened at some point, right?</p> <p>12 A. That is not correct.</p> <p>13 Q. Let me phrase it another way. There's</p> <p>14 some point at which you stopped collecting on</p> <p>15 Pennsylvania loans?</p> <p>16 A. Correct.</p> <p>17 Q. Okay. Before that happened, did NCA get</p> <p>18 any complaints from Pennsylvania borrowers</p> <p>19 complaining that these loans aren't legal in</p> <p>20 Pennsylvania?</p> <p>21 A. I can't say whether I know whether we</p> <p>22 did or didn't. I can make the assumption that</p> <p>23 we would have received some complaints. The</p> <p>24 complaints that I reviewed in preparation, I</p>	<p style="text-align: right;">Page 199</p> <p>1 collect, you know, from each one of those,</p> <p>2 hence why most issuers end up selling their</p> <p>3 debt.</p> <p>4 Of those, many have a good</p> <p>5 reason why they don't believe they should pay</p> <p>6 the debt. So it's up to us to understand and</p> <p>7 treat complaints very seriously and try to</p> <p>8 understand the validity of it, as well.</p> <p>9 Q. But going back to the procedures, and I</p> <p>10 understand that you can't recall any</p> <p>11 complaints specifically disputing the legality</p> <p>12 of the loan, but was there a procedure for</p> <p>13 what would happen with -- I mean you're aware</p> <p>14 that --- you're certainly aware now that it's</p> <p>15 not legal -- lending is not legal in all</p> <p>16 states, right?</p> <p>17 A. Right.</p> <p>18 MR. DAUGHERTY: Objection.</p> <p>19 It calls for a legal conclusion.</p> <p>20 BY MR. ACKELSBURG:</p> <p>21 Q. You've actually, as part of your efforts</p> <p>22 to turn things around at the company, are</p> <p>23 paying more attention to things like that,</p> <p>24 correct, than maybe Mr. Hochstein did in the</p>
<p style="text-align: right;">Page 198</p> <p>1 didn't see in my review any complaint</p> <p>2 specifying that they believe that the loan is</p> <p>3 illegal in Pennsylvania. But I'm not going to</p> <p>4 say it didn't happen.</p> <p>5 Q. Before you stopped collecting Payday</p> <p>6 Loans in New York, did you ever get a</p> <p>7 complaint from a New York consumer that, these</p> <p>8 loans aren't legal I hear?</p> <p>9 MR. DAUGHERTY: Objection,</p> <p>10 beyond the scope of the 30-B(6) notice.</p> <p>11 THE WITNESS: Getting</p> <p>12 complaints is serious to us. You're speaking</p> <p>13 directly about whether or not a consumer is</p> <p>14 asking or telling us that they believe the</p> <p>15 loan is illegal. I don't, to my knowledge,</p> <p>16 know when we got those complaints, how many</p> <p>17 complaints. Did it happen? I'm sure it did</p> <p>18 happen. And I'm sure we've got them</p> <p>19 documented, along with many other complaints,</p> <p>20 as well. Some are valid and some are not.</p> <p>21 When we buy a portfolio, we</p> <p>22 may only contact 30 percent of the borrowers,</p> <p>23 right. And of those 30 percent of the</p> <p>24 borrowers that we actually contact, we don't</p>	<p style="text-align: right;">Page 200</p> <p>1 past?</p> <p>2 MR. DAUGHERTY: Objection to</p> <p>3 form.</p> <p>4 THE WITNESS: Paying</p> <p>5 attention to a lot of things, yes, to make</p> <p>6 sure that we don't put ourselves into a</p> <p>7 position that would be negative.</p> <p>8 BY MR. ACKELSBURG:</p> <p>9 Q. What would be your expectation of how</p> <p>10 your collectors today would handle a call if</p> <p>11 someone said, this is a Payday loan that I</p> <p>12 think is illegal?</p> <p>13 A. My expectation again would be that that</p> <p>14 account ends up into a dispute status with</p> <p>15 notes within the account. That would fall</p> <p>16 into a dispute report that somebody in our</p> <p>17 back office would go through and go through</p> <p>18 the process.</p> <p>19 Q. Am I right that over the course of the</p> <p>20 relationship, between NCA and the Think</p> <p>21 Finance products, that there would be on</p> <p>22 occasion a referral of a complaint to Brett</p> <p>23 Horrocks to send to the appropriate person?</p> <p>24 MR. DAUGHERTY: Object to</p>

<p style="text-align: right;">Page 201</p> <p>1 form.</p> <p>2 MR. SHELDON: Same objection.</p> <p>3 THE WITNESS: It definitely</p> <p>4 could have happened. I believe he's on these</p> <p>5 logs, and he did have access to. This is via</p> <p>6 e-mail. There is an SFDP that you can't send</p> <p>7 everything through e-mail, right. So access</p> <p>8 to it was where most of our reports would set.</p> <p>9 BY MR. ACKELSBURG:</p> <p>10 Q. Who had access to the SFDP?</p> <p>11 A. I don't particularly know. I believe</p> <p>12 Brett would have had access to it. I believe</p> <p>13 the folks that needed access at the tribes at</p> <p>14 the credit issuer would have access, as well</p> <p>15 as folks at Think Finance would have access to</p> <p>16 it.</p> <p>17 Q. One thing we haven't talked about, we</p> <p>18 have talked about the relationships that NCA</p> <p>19 has with agencies that are collecting, hired</p> <p>20 as collectors for NCA. We haven't -- I don't</p> <p>21 believe that we talked about NCA actually</p> <p>22 selling debt to secondary purchasers. And</p> <p>23 that's something that has happened in the</p> <p>24 past; am I right?</p>	<p style="text-align: right;">Page 203</p> <p>1 products et cetera, they would have halted</p> <p>2 upon the new contract that -- about the same</p> <p>3 time as Schedule A.</p> <p>4 Q. I want to -- there were some documents</p> <p>5 in the production concerning some sale of</p> <p>6 Plain Green debt, and I wanted to bring some</p> <p>7 of these to your attention and see if you can</p> <p>8 -- do you want to change the DVD. I have</p> <p>9 roughly 20 minutes left, a half hour.</p> <p>10 VIDEOTAPE OPERATOR: That</p> <p>11 concludes DVD number three, the time is 3:21</p> <p>12 We're off the record.</p> <p>13 - - -</p> <p>14 (Whereupon Exhibit P-91 was</p> <p>15 marked for identification.)</p> <p>16 - - -</p> <p>17 VIDEOTAPE OPERATOR: This begins</p> <p>18 DVD number four, the time is 3:27 p.m.</p> <p>19 BY MR. ACKELSBURG:</p> <p>20 Q. Mr. Rempel, I'm showing you what has</p> <p>21 been marked as Plaintiff's Exhibit 91. It's</p> <p>22 an NCA document numbered 10393. You'll see</p> <p>23 this is from May of 2012. It looks like this</p> <p>24 e-mail chain began with someone at Think</p>
<p style="text-align: right;">Page 202</p> <p>1 A. Yes.</p> <p>2 Q. Does it happen now?</p> <p>3 A. In 2016, late 2016, when I took over, we</p> <p>4 suspended debt sales. We did that because I</p> <p>5 didn't feel like I had my hands around the</p> <p>6 process to onboard, you know, potential</p> <p>7 buyers. And I just wanted to make sure that</p> <p>8 we were confident with identifying potential</p> <p>9 partners to sell to.</p> <p>10 Q. Before you did stop the practice of</p> <p>11 reselling your debt, how much of NCA's debt</p> <p>12 was it selling to secondary purchasers?</p> <p>13 MR. DAUGHERTY: Objection to</p> <p>14 form.</p> <p>15 THE WITNESS: I honestly</p> <p>16 can't answer the percentage or how much debt.</p> <p>17 I think stated earlier today, there was --</p> <p>18 debt sales were more prevalent leading up to</p> <p>19 2012, '13, before issuers started requesting</p> <p>20 that there would be no resale clauses in their</p> <p>21 contracts. I know that there were some debt</p> <p>22 sales, you know, in 2015. I don't recall</p> <p>23 exactly what they were, I don't know.</p> <p>24 But pertaining to these</p>	<p style="text-align: right;">Page 204</p> <p>1 Finance named Joan Verna, who has the title of</p> <p>2 legal specialist. Is that someone you ever</p> <p>3 heard of?</p> <p>4 A. It's not somebody I am familiar with,</p> <p>5 no.</p> <p>6 Q. So she looks like she had some</p> <p>7 complaints from consumers and she is</p> <p>8 forwarding to Brett, right, do you see that?</p> <p>9 A. Yes, that looks correct to me.</p> <p>10 Q. It's three complaints. One is the Think</p> <p>11 Cash account, one is a Payday One account, and</p> <p>12 one is a Plain Green account. Do you see</p> <p>13 that?</p> <p>14 A. I do.</p> <p>15 Q. Brett forwards her request to Kevin</p> <p>16 Emmerich, right?</p> <p>17 A. Correct.</p> <p>18 Q. And then if we look up the chain, it</p> <p>19 looks like Kevin reports back to Brett with</p> <p>20 regard to the Plain Green account, Brenda</p> <p>21 Stevens. And this is what Kevin says: Craig</p> <p>22 said the account was at Frontier, and he</p> <p>23 called them. And then they said they never</p> <p>24 refused the consumer address information. He</p>

<p style="text-align: right;">Page 205</p> <p>1 told them to be sure to always supply this to</p> <p>2 the consumer and any others that requested it.</p> <p>3 Right. Do you know who Craig is?</p> <p>4 A. Yes.</p> <p>5 Q. Who is Craig?</p> <p>6 A. I believe Kevin would be referring to</p> <p>7 Craig Dilbeck. He's an NCA employee. His</p> <p>8 responsibility at that time was -- he was an</p> <p>9 agency manager.</p> <p>10 Q. And so it sounds like what Craig is</p> <p>11 reporting back to Kevin was that this Plain</p> <p>12 Green account had been sold to Frontier,</p> <p>13 right?</p> <p>14 MR. DAUGHERTY: Objection to</p> <p>15 form.</p> <p>16 THE WITNESS: I would say</p> <p>17 that he didn't state that it had been sold.</p> <p>18 BY MR. ACKELSBURG:</p> <p>19 Q. I know that. Was Frontier a collector</p> <p>20 for you back then?</p> <p>21 A. Frontier was a collector, yes, it was an</p> <p>22 agency.</p> <p>23 Q. Maybe it's collecting debt for you --</p> <p>24 was Frontier also buying?</p>	<p style="text-align: right;">Page 207</p> <p>1 entity. It's listed on the e-mail, that's why</p> <p>2 I'm speaking to it.</p> <p>3 Q. And you see the next page it's -- it</p> <p>4 looks like an hour earlier, I'm sorry. It's a</p> <p>5 day later. A day later Kevin telling Brett,</p> <p>6 Brad told me to send you the information we</p> <p>7 have on Frontier to try to get them approved.</p> <p>8 What do you think that's about?</p> <p>9 MR. DAUGHERTY: Object to</p> <p>10 form.</p> <p>11 BY MR. ACKELSBURG:</p> <p>12 Q. Does he mean get them approved by Think</p> <p>13 Finance for selling the debt that we buy to</p> <p>14 Frontier?</p> <p>15 MR. SHELTON: Objection to</p> <p>16 form.</p> <p>17 MR. DAUGHERTY: Objection to</p> <p>18 form.</p> <p>19 THE WITNESS: I honestly -- I</p> <p>20 wouldn't know. Do you have -- I can't answer</p> <p>21 that. I don't know what the request for</p> <p>22 approval was.</p> <p>23 BY MR. ACKELSBURG:</p> <p>24 Q. But you do know that in that time</p>
<p style="text-align: right;">Page 206</p> <p>1 A. Honestly, I don't recall. We had sold</p> <p>2 debt to them in the past, I can't say whether</p> <p>3 these accounts were.</p> <p>4 - - -</p> <p>5 (Whereupon Exhibit P-92 was</p> <p>6 marked for identification.)</p> <p>7 - - -</p> <p>8 BY MR. ACKELSBURG:</p> <p>9 Q. So this is an e-mail from about two</p> <p>10 weeks later. Do you see that? Also between</p> <p>11 Kevin and Brett Horrocks. And they're</p> <p>12 discussing sales to someone named Marty</p> <p>13 Mazzara, right?</p> <p>14 A. Yes.</p> <p>15 Q. Is Marty Mazzara someone that you know?</p> <p>16 A. I do know who he is. I know him as the</p> <p>17 owner of Frontier. I had heard of SKUTR. I</p> <p>18 don't know the ownership of it, et cetera, or</p> <p>19 Worldwide. But I had known that he was</p> <p>20 involved some way or some form, and those -- I</p> <p>21 don't know even know what they do.</p> <p>22 Frontier, I know them as an</p> <p>23 agency that we placed with and sold paper to.</p> <p>24 I don't know if SKUTR would be the buying</p>	<p style="text-align: right;">Page 208</p> <p>1 period, some portion of NCA's Payday Loans or</p> <p>2 installment loans were being sold to Marty</p> <p>3 Mazzara. You do know that though, right?</p> <p>4 A. Yes, and based on this e-mail, it's</p> <p>5 saying that it sold to Marty Mazzara, Payday</p> <p>6 Loans and Think Cash.</p> <p>7 Q. How would Kevin have gotten that</p> <p>8 information?</p> <p>9 A. So Kevin would have -- he would have</p> <p>10 been the one to put together the sales</p> <p>11 contract and update it with the volumes, et</p> <p>12 cetera, and execute the sale with whomever is</p> <p>13 buying. And that's why Kevin would be</p> <p>14 involved, you know, on that side of it.</p> <p>15 - - -</p> <p>16 (Whereupon Exhibit P-93 was</p> <p>17 marked for identification.)</p> <p>18 - - -</p> <p>19 BY MR. ACKELSBURG:</p> <p>20 Q. Let's look at the next document in this</p> <p>21 sequence. So this appears to be some</p> <p>22 information about Marty. You take that to</p> <p>23 mean Marty Mazzara, right?</p> <p>24 A. Yes.</p>

<p style="text-align: right;">Page 209</p> <p>1 Q. So this is information about Marty 2 Mazzara that Kevin is providing to Brett 3 Horrocks, right? 4 A. That is what the exhibit represents, 5 yes. 6 Q. The first page of the due diligence 7 questionnaire, the second page of the exhibit 8 references an address, Galleria Drive in 9 Henderson, Nevada. Is that where you know 10 Marty's group is located? 11 MR. DAUGHERTY: Objection to 12 form. 13 THE WITNESS: I knew that his 14 group was located in -- 15 BY MR. ACKELSBURG: 16 Q. Near Las Vegas? 17 A. Henderson, Nevada, yeah. 18 Q. And then on the third page of the due 19 diligence, one of his trade references a 20 company called United Debt Holdings, with a 21 contact of Craig Manseth. Is that a company 22 you're familiar with? 23 A. Yes. 24 Q. Am I right that NCA sold debt to United</p>	<p style="text-align: right;">Page 211</p> <p>1 A. Reading through, just this attachment, I 2 don't know what the difference is. It appears 3 to me that Frontier would be a collection 4 entity and maybe SKUTR is the financial buyer. 5 Q. Like Level is for you? 6 A. Potentially, maybe just the investor. I 7 don't know the structure. 8 Q. What about the name on that letter from 9 SKUTR, Zachary Roberts. Did you ever hear of 10 him? 11 A. I can't say that I remember that. 12 Actually, I don't know Zach Robert's. 13 Q. What about on page seven, under Zachary 14 Roberts, the president, the chief financial 15 officer. If I told you his name was Michael, 16 would that be a familiar name to you, Michael 17 Friedl, F-R-I-E-D-L? 18 A. No, it doesn't ring a bell to me. The 19 Frontier folks, I may not know who they are. 20 Q. Who are they? 21 A. Martin Mazzara, Peter Jaselli. 22 Q. Do you know them personally? Have you 23 ever met Marty Mazzara? 24 A. I have.</p>
<p style="text-align: right;">Page 210</p> <p>1 Debt Holdings? 2 A. I believe so, yes. 3 Q. Including -- and talking specifically 4 about the high rate online consumer debt? 5 MR. DAUGHERTY: Object to 6 form. 7 THE WITNESS: I wouldn't -- 8 when you say that question specifically, the 9 high rate, did we sell him -- 10 BY MR. ACKELSBURG: 11 Q. Payday Loans. 12 MR. DAUGHERTY: Object to 13 form. 14 THE WITNESS: Yeah, we very 15 well could have, yes. 16 BY MR. ACKELSBURG: 17 Q. And these other company names, for 18 what's referred to as Marty's group, if you 19 turn the page on five, there's something 20 called SKUTR Financial, SKUTR. Is that a 21 company you've heard of? 22 A. I've heard of them. 23 Q. Do you know what the difference is 24 between Frontier and SKUTR?</p>	<p style="text-align: right;">Page 212</p> <p>1 Q. What context? 2 A. I had met Marty out at a trade show in 3 Las Vegas at the debt buyers convention. Brad 4 had a meeting with him simply discussing, in 5 the very beginning, the placement of potential 6 accounts to Frontier to work on a contingent 7 basis. I can't tell you what year that was. 8 Peter Jaselli, I can't 9 remember when I met him. He has been in the 10 industry for a long time. I can't recall if I 11 met him prior to Frontier. I believe now he's 12 working at Trans Union. 13 Anthony Guadagna, 14 G-U-A-D-A-G-N-A, he I believe is Marty's son. 15 Michael Hall, I don't know that I've ever met 16 Michael Hall. 17 - - - 18 (Whereupon Exhibit P-94 was 19 marked for identification.) 20 - - - 21 BY MR. ACKELSBURG: 22 Q. Let's look at the next document, 94. So 23 we're actually looking at 94. 24 (Cross Talk)</p>

<p style="text-align: right;">Page 213</p> <p>1 A. We're actually looking at 94?</p> <p>2 Q. Yes, we're looking at 94 now.</p> <p>3 MR. DAUGHERTY: Can I get the</p> <p>4 Bates on 94, just to make sure I've got the</p> <p>5 right document.</p> <p>6 MR. ACKELSBURG: NCA-11970.</p> <p>7 MR. DAUGHERTY: Thank you.</p> <p>8 BY MR. ACKELSBURG:</p> <p>9 Q. So if we start from the beginning of the</p> <p>10 chain, this is now -- this is in October of</p> <p>11 the same year, 2012. This is originating from</p> <p>12 the same person at Think Finance, Joan Verna.</p> <p>13 MR. DAUGHERTY: Objection to</p> <p>14 form.</p> <p>15 BY MR. ACKELSBURG:</p> <p>16 Q. Sending, and also to Brett Horrocks</p> <p>17 information about someone named -- a Plain</p> <p>18 Green customer named Denise Addison. And</p> <p>19 she's asking, who is handling this account?</p> <p>20 Do you see that?</p> <p>21 A. Yes, I see that.</p> <p>22 Q. Eventually it goes to Vicky Elsey at NCA</p> <p>23 and then Vicky reports to Brett that this</p> <p>24 account has been confirmed closed with our</p>	<p style="text-align: right;">Page 215</p> <p>1 Q. So maybe you sold it to a different</p> <p>2 buyer, and that buyer was having Marty's group</p> <p>3 collect on it?</p> <p>4 A. Potentially. I just don't know. But it</p> <p>5 would be easy to assume that it was sold to</p> <p>6 Frontier. But I just can't say whether that</p> <p>7 is 100 percent accurate.</p> <p>8 - - -</p> <p>9 (Whereupon Exhibit P-95 was</p> <p>10 marked for identification.)</p> <p>11 - - -</p> <p>12 BY MR. ACKELSBURG:</p> <p>13 Q. Let's look at 95, this is one page.</p> <p>14 This is -- the following the month, this is</p> <p>15 now November of 2012, same year. Again, Joan</p> <p>16 Verna, this is now a different Plain Green</p> <p>17 account, right?</p> <p>18 A. Yes.</p> <p>19 Q. And she is saying according to the</p> <p>20 system, it was sold December 12th, 2011 to</p> <p>21 NCA, and then she is telling Brett that it</p> <p>22 appears it was passed on to Frontier Financial</p> <p>23 and asking that it be brought back. Do you</p> <p>24 see that?</p>
<p style="text-align: right;">Page 214</p> <p>1 buyer. The agency that had the account was</p> <p>2 Frontier Financial. Do you see that?</p> <p>3 A. I do see that.</p> <p>4 Q. So this is -- before you weren't sure if</p> <p>5 the account going to Frontier, the Plain Green</p> <p>6 account was either -- was a sold account or</p> <p>7 Frontier was just doing collection work for</p> <p>8 NCA. Here is one where the account appears to</p> <p>9 have been sold. The Plain Green loan was sold</p> <p>10 by NCA to Frontier Financial, correct?</p> <p>11 MR. DAUGHERTY: Objection,</p> <p>12 mischaracterizes the document.</p> <p>13 BY MR. ACKELSBURG:</p> <p>14 Q. That's what this e-mail says; am I</p> <p>15 right?</p> <p>16 MR. DAUGHERTY: Same</p> <p>17 objection.</p> <p>18 THE WITNESS: I don't know</p> <p>19 that you can make that assumption. I'm not</p> <p>20 saying it's correct. It could be. We didn't</p> <p>21 only sell to Frontier. The agency that had it</p> <p>22 may have had the account and created -- I</p> <p>23 don't know --</p> <p>24 BY MR. ACKELSBURG:</p>	<p style="text-align: right;">Page 216</p> <p>1 A. Yes, I do.</p> <p>2 Q. Again, you can't be sure whether</p> <p>3 Frontier was functioning as an agent for NCA</p> <p>4 or actually had purchased the loan?</p> <p>5 A. That is correct, only because we utilize</p> <p>6 Frontier as both an agency as well as a group</p> <p>7 that was sold to. I know that they received</p> <p>8 placements from other debt buyers as well.</p> <p>9 Without looking at who all was purchasing or</p> <p>10 being sold to at that time, it would be hard</p> <p>11 for me to say that this was a purchased</p> <p>12 account by Frontier, as opposed to a placed</p> <p>13 account sold to somebody else.</p> <p>14 Q. I think you said previously that</p> <p>15 Frontier is doing some collection for NCA now?</p> <p>16 A. Today?</p> <p>17 Q. Uh-huh.</p> <p>18 A. No.</p> <p>19 Q. No, they're not, okay.</p> <p>20 A. I did not say that?</p> <p>21 Q. I'm sorry. I misunderstood. At some</p> <p>22 point they were, but that relationship ceased?</p> <p>23 A. That's correct.</p> <p>24 Q. Do you recall when that might have been,</p>

<p style="text-align: right;">Page 217</p> <p>1 roughly?</p> <p>2 A. Roughly March -- mid 2017, let's just</p> <p>3 call it.</p> <p>4 Q. So fairly recently?</p> <p>5 A. Yeah, fairly recently.</p> <p>6 Q. What caused that?</p> <p>7 A. Just a handful of things, the</p> <p>8 responsiveness of them responding to requests,</p> <p>9 they were behind on remits to us, as far as</p> <p>10 sending money. Every time that we'd have a</p> <p>11 discussion about getting back on track, it</p> <p>12 wouldn't happen. The relationship dwindled.</p> <p>13 If we had requests for -- such as to close an</p> <p>14 account, it was very -- there was a lot of</p> <p>15 work on our side to get it done. They weren't</p> <p>16 responsive, weren't being good partners and</p> <p>17 made the decision that that's not a group we</p> <p>18 want to do business with.</p> <p>19 Q. I notice that Frontier was not listed as</p> <p>20 the agents on any of the Schedule A's that we</p> <p>21 looked at before. Is there a reason for them</p> <p>22 not being included?</p> <p>23 A. Yes, it -- so I believe that schedule A</p> <p>24 was later than these e-mails of 2012. And</p>	<p style="text-align: right;">Page 219</p> <p>1 form.</p> <p>2 THE WITNESS: I don't know if</p> <p>3 he would be making the decision, but he would</p> <p>4 be informing us of the decision.</p> <p>5 - - -</p> <p>6 (Whereupon Exhibit P-96 was</p> <p>7 marked for identification.)</p> <p>8 - - -</p> <p>9 BY MR. ACKELSBURG:</p> <p>10 Q. Right, okay. This the last of the</p> <p>11 documents dealing with the debt sales, P-96.</p> <p>12 The court reporter appreciates you keeping</p> <p>13 them in order.</p> <p>14 A. I can't guarantee that they are in</p> <p>15 order, my apologies.</p> <p>16 Q. So -- I'll let you finish reading. So</p> <p>17 again it's the same Joan Verna at Think</p> <p>18 Finance bringing a complaint to Brett's</p> <p>19 attention, correct?</p> <p>20 A. Correct.</p> <p>21 Q. This would be about a consumer being</p> <p>22 treated improperly by a collector. How would</p> <p>23 a consumer know -- we've seen all of these,</p> <p>24 they are originating with this legal</p>
<p style="text-align: right;">Page 218</p> <p>1 Frontier changed their name to -- it's</p> <p>2 escaping me. Frontier ultimately changed</p> <p>3 their name from Frontier to.</p> <p>4 MR. SHELDON: Global?</p> <p>5 THE WITNESS: Summit, Summit</p> <p>6 Receivables. I can't remember when that was.</p> <p>7 It was some time ago. I don't even know if</p> <p>8 you see Summit on that original list of</p> <p>9 agencies. But if they weren't approved, we</p> <p>10 wouldn't have been placing new accounts after</p> <p>11 that approval process was put in place.</p> <p>12 BY MR. ACKELSBURG:</p> <p>13 Q. What was the nature of the approval</p> <p>14 process? Who had to do the approving, with</p> <p>15 regard to Plain Green and Great Plains loans?</p> <p>16 A. Well, it appears that the questionnaires</p> <p>17 that would be provided to us by Brett Horrocks</p> <p>18 or the likes, we would provide them to the</p> <p>19 issuer -- not the issuer, the agency. They</p> <p>20 would fill them out and they would make their</p> <p>21 way back to Brett Horrocks.</p> <p>22 Q. And he would tell you yay or nay with</p> <p>23 regard to a particular agency?</p> <p>24 MR. DAUGHERTY: Object to</p>	<p style="text-align: right;">Page 220</p> <p>1 specialist named Joan Verna at Think Finance.</p> <p>2 So the consumers have -- whether it's a Think</p> <p>3 Cash loan or a Plain Green loan, how would</p> <p>4 they know to call Think Finance, do you know?</p> <p>5 Do you know how that would end up getting</p> <p>6 there? Or would this be a complaint being</p> <p>7 communicated through some system? How did</p> <p>8 work? How did consumer complaints like this,</p> <p>9 during this period of time, make their way to</p> <p>10 Think Finance and then to Brett Horrocks?</p> <p>11 MR. DAUGHERTY: Objection to</p> <p>12 form.</p> <p>13 THE WITNESS: I can't answer</p> <p>14 how they would make their way to Think</p> <p>15 Finance. Is this particular complaint or</p> <p>16 account that's being complained about -- does</p> <p>17 it specify what kind of account it was?</p> <p>18 BY MR. ACKELSBURG:</p> <p>19 Q. Yeah, it was a Think Cash loan. It's</p> <p>20 First Bank of Delaware, right?</p> <p>21 A. But your question isn't related to how</p> <p>22 this one made it's way to Think Finance, or is</p> <p>23 it?</p> <p>24 Q. I was curious, just in terms of the</p>

<p style="text-align: right;">Page 221</p> <p>1 process. We've seen all of these, this as 2 well as the earlier ones that were involved 3 with Frontier, they all start with this woman 4 named Joan at Think Finance. I'm just curious 5 how -- 6 A. I couldn't answer. I apologize. 7 Q. We'll ask Think Finance. So this, like 8 the others, makes it way up the chain. She 9 sends this complaint to Brett. Brett sends it 10 to it Kevin or Brad or whoever, in this case 11 Kevin; and then we end up with a report to 12 Brett. It's at the top, Brett's thanking 13 Brett -- thanking Kevin for the information. 14 And it looks like the information that comes 15 back from Kevin Emmerich at NCA is that NCA 16 looks like sold the account to some companies 17 associated with Brad Spoor, who in turn sold 18 the account a third time to some buyer named 19 Northern Resolution Group, and it gives the 20 name of the people, Mark Gray and Doug 21 Mackinnon, M-A-C-K-I-N-N-O-N. They also use 22 the name Cooper Financial in Delray. And then 23 they, in turn, placed the collection with an 24 agency named Bova Juliani, and that the</p>	<p style="text-align: right;">Page 223</p> <p>1 I can answer whether it's normal, I guess. 2 Q. I'm really not asking, I mean I'm sure 3 that this kind of conduct -- I'm not 4 suggesting that this kind of conduct by a 5 collector is normal. I mean that really was 6 not what I was focusing on. At this point -- 7 in this period of time, was it unusual for the 8 kind of debt that we're talking about, this 9 high rate consumer online debt to be sold 10 three or four times? 11 MR. DAUGHERTY: Objection to 12 form. 13 THE WITNESS: I don't know. 14 I honestly don't know if that is a normal 15 process or not. I would also -- I would say 16 that it's a -- to sell and resell a bad debt 17 portfolio was not abnormal, and to state that 18 it's specific to short term or high rate 19 interest rate loans, I would say is 20 misrepresented. 21 BY MR. ACKELSBURG: 22 Q. It's more -- 23 A. It's just a practice. 24 Q. In the debt buying world, in general?</p>
<p style="text-align: right;">Page 222</p> <p>1 improper conduct -- improper collection call 2 was from this Bova Juliani. Do you see this? 3 A. I do. 4 Q. Is this unusual for you to see -- it 5 looks like the debt was actually sold two 6 times after you bought it. You sold it to one 7 company, and that company sold it to another 8 company that had another company do the 9 collections. 10 MR. DAUGHERTY: Object to 11 form. 12 MR. SHELTON: Object to form. 13 THE WITNESS: Is that normal 14 is what you're asking? 15 BY MR. ACKELSBURG: 16 Q. Yeah, I guess that is what I'm asking. 17 A. I wouldn't characterize it as normal in 18 today's environment. 19 Q. In 2012, was it normal? 20 A. In 2012 I think -- define normal, I 21 guess. This is, just as I read through this, 22 it's a very concerning complaint to me. I 23 can't say that I had seen it previously, but I 24 don't know that it's normal really, or whether</p>	<p style="text-align: right;">Page 224</p> <p>1 A. Over the course of -- at least my career 2 in the space, it was something that companies 3 utilized. 4 Now if you go look at your 5 public company, your Encores, PRA's may be 6 less prevalent there. They are operating 7 with, you know, a different capital structure 8 that may benefit more by keeping a product -- 9 you know, cradle to grave is what I call it. 10 Purchase it and keep it forever. 11 For a company of our size or 12 smaller companies, it's not abnormal for, you 13 know, debt to be sold multiple times. My 14 opinion of is that's why issuers, as well as 15 regulars came out in 2012 or later and tried 16 to rein that in, because it creates a 17 different he difficult environment, 18 potentially on the consumer. 19 Q. It's hard to maintain accountability 20 when you don't know who owns what, right? 21 MR. DAUGHERTY: Objection to 22 form. 23 THE WITNESS: If I put myself 24 in a consumer's shoes, I would find it</p>

<p style="text-align: right;">Page 225</p> <p>1 difficult if I was being called on the same</p> <p>2 account over the course of time, not knowing</p> <p>3 where it's at et cetera. If everybody in the</p> <p>4 line of purchasing is following the law, which</p> <p>5 you have to make the assumption that people</p> <p>6 would do that, each one of the purchasers</p> <p>7 would have sent a first notice letter to the</p> <p>8 consumer at the address and informed them that</p> <p>9 they purchased it and who to contacts to pay</p> <p>10 it.</p> <p>11 I feel like a lot of</p> <p>12 speculation. I'm just more -- I don't like</p> <p>13 reading about complaints like this. So...</p> <p>14 Q. All right. So let's turn to the topic</p> <p>15 that we eluded to before but haven't actually</p> <p>16 directly covered, and that is the recall of</p> <p>17 the Pennsylvania loans. This is Exhibit P-97.</p> <p>18 While we're at it, there's a second one that</p> <p>19 we'll call 98 on the same subject. So we may</p> <p>20 as well discuss them together.</p> <p>21 - - -</p> <p>22 (Whereupon Exhibits P-97 and</p> <p>23 P-98 were marked for identification.)</p> <p>24 - - -</p>	<p style="text-align: right;">Page 227</p> <p>1 Q. All right and so -- and this recall</p> <p>2 covers all active Think product accounts with</p> <p>3 -- that are coded as Pennsylvania, correct?</p> <p>4 MR. DAUGHERTY: Objection to</p> <p>5 form.</p> <p>6 THE WITNESS: I will just</p> <p>7 quickly go through this.</p> <p>8 BY MR. ACKELSBURG:</p> <p>9 Q. Sure.</p> <p>10 A. I would say your comment is correct.</p> <p>11 Q. And what Jack is doing is also listing</p> <p>12 all of the accounts that he can that you know</p> <p>13 that he can identify within the NCA system in</p> <p>14 a first look, right, that's what he's doing</p> <p>15 here?</p> <p>16 MR. DAUGHERTY: Objection to</p> <p>17 form.</p> <p>18 THE WITNESS: That would</p> <p>19 effectively meet the state placed or current</p> <p>20 residence of an address within Pennsylvania.</p> <p>21 BY MR. ACKELSBURG:</p> <p>22 Q. Okay. And then it lists the various</p> <p>23 products that are included within this recall,</p> <p>24 right?</p>
<p style="text-align: right;">Page 226</p> <p>1 BY MR. ACKELSBURG:</p> <p>2 Q. So 97 is NCA-2603 and the Bates number</p> <p>3 on Exhibit-98 is NCA-7264. So we'll take</p> <p>4 these in order. So the first is from August</p> <p>5 2015. The initial -- it looks like the</p> <p>6 initial -- let's start with the initial</p> <p>7 e-mail. It's from Jack Mahoney to a variety</p> <p>8 of people in the company, including yourself</p> <p>9 Mr. Rempel. And the subject is Think Product</p> <p>10 Close and Recall PA.</p> <p>11 First of all, do you remember</p> <p>12 this happening back in August of 2015?</p> <p>13 A. I do recall this happening in 2015.</p> <p>14 Q. The e-mail is coming from your data guy,</p> <p>15 Jack Maloney. This wouldn't have started with</p> <p>16 him, right. So do you recall what happened to</p> <p>17 trigger this e-mail from Jack?</p> <p>18 A. I can't say that I recall. My</p> <p>19 assumption would be that Shawn Gylling would</p> <p>20 have directed or Brad would have been</p> <p>21 directing Jack to pull this information.</p> <p>22 Ultimately Brad would have been the one to</p> <p>23 make the decision to move them off of the</p> <p>24 collection floor.</p>	<p style="text-align: right;">Page 228</p> <p>1 A. Correct.</p> <p>2 Q. These are the lists of the various Think</p> <p>3 products. Now there's something named</p> <p>4 Elastic. We haven't talked about that and I</p> <p>5 don't think we need to. There's Great Plains,</p> <p>6 where there is 2,779 accounts, right? A total</p> <p>7 of roughly 3.4 million dollars in account</p> <p>8 balance, right? Do you see that?</p> <p>9 A. Yes, I do.</p> <p>10 Q. And then there's -- I'm confused, there</p> <p>11 a breakout for Payday One, Plain Green and</p> <p>12 Think Cash. But there is a separate category</p> <p>13 called JC Payday One, JC Plain Green and JC</p> <p>14 Think Cash. Do you know what that means?</p> <p>15 A. Yes, that was account that were bought</p> <p>16 back, got labeled JC -- I believe that was</p> <p>17 just a coin notation from -- at one point we</p> <p>18 had to buy -- I don't know if it was these</p> <p>19 particular accounts or another set of accounts</p> <p>20 back from an agency called ADS or Johnny</p> <p>21 Chabot was the owner of it. So the initials</p> <p>22 JC got associated with when we started buying</p> <p>23 back these accounts. That's how we put them</p> <p>24 in out system. It was just a way to notate</p>

<p style="text-align: right;">Page 229</p> <p>1 these accounts were owned at one point in</p> <p>2 time, sold and bought back.</p> <p>3 Q. And so if you wanted the total number of</p> <p>4 Plain Green loans, you would need to add up</p> <p>5 the two different Plain Greens, the JC Plain</p> <p>6 Green and the Plain Green?</p> <p>7 MR. DAUGHERTY: Objection to</p> <p>8 form.</p> <p>9 THE WITNESS: I believe so.</p> <p>10 BY MR. ACKELSBURG:</p> <p>11 Q. Okay. As you explained, when Jack says</p> <p>12 they've been moved to BHL D, that's the hold</p> <p>13 code, moving off the floor making the account</p> <p>14 inactive that you described before?</p> <p>15 A. Correct.</p> <p>16 Q. And I think this is -- and I think</p> <p>17 you've already explained to us that on your</p> <p>18 system, these Pennsylvania accounts would</p> <p>19 still be there but would be classified as</p> <p>20 BHL D?</p> <p>21 A. Yes, they would be not in a state to be</p> <p>22 -- I mean collectors would identify it as an</p> <p>23 ineligible account. For example, if this</p> <p>24 consumer had another account, such as a</p>	<p style="text-align: right;">Page 231</p> <p>1 Q. Would your system alert -- would there</p> <p>2 be any alert in the system to the fact that</p> <p>3 there is information about this consumer in</p> <p>4 BHL D?</p> <p>5 MR. DAUGHERTY: Objection to</p> <p>6 form.</p> <p>7 THE WITNESS: Information</p> <p>8 about this consumer in BHL D. The collector</p> <p>9 would -- I don't know if alert is the correct</p> <p>10 word --</p> <p>11 BY MR. ACKELSBURG:</p> <p>12 Q. But the collector would know it, right?</p> <p>13 A. They would be able to identify that</p> <p>14 there was an account that they cannot</p> <p>15 technically work, as well as the consumer's</p> <p>16 information associated to that account would</p> <p>17 not be accessible to them, et cetera, that we</p> <p>18 purchased from, you know, that account.</p> <p>19 Q. I think you answered my question that I</p> <p>20 intended to ask. So the collector could not</p> <p>21 access that BHL D information concerning the</p> <p>22 Plain Green loan?</p> <p>23 A. They couldn't access that consumer's</p> <p>24 information related to the Plain Green loan.</p>
<p style="text-align: right;">Page 230</p> <p>1 Sterling Jeweler account, they could still see</p> <p>2 the other account. The phones numbers would</p> <p>3 be grayed out, et cetera, things like that.</p> <p>4 Q. If let's say the same person who has a</p> <p>5 BHL D Plain Green account from Pennsylvania</p> <p>6 were to go delinquent on a Sterling account --</p> <p>7 are you still collecting for Sterling today?</p> <p>8 MR. DAUGHERTY: Objection,</p> <p>9 beyond the scope of that deposition notice.</p> <p>10 THE WITNESS: We still own</p> <p>11 Sterling debt. So it would be an assumption</p> <p>12 that we do collect --</p> <p>13 BY MR. ACKELSBURG:</p> <p>14 Q. It doesn't even have to be Sterling.</p> <p>15 Let's say you're collecting -- you still</p> <p>16 collect other kinds of consumer debt other</p> <p>17 than Payday Loans for Pennsylvania consumers,</p> <p>18 right?</p> <p>19 A. It's possible, yes.</p> <p>20 Q. Let's say you're collecting a loan on a</p> <p>21 credit card for someone that lives in</p> <p>22 Pennsylvania and who previously had a debt to</p> <p>23 Plain Green that you're collecting.</p> <p>24 A. Okay.</p>	<p style="text-align: right;">Page 232</p> <p>1 They could see the consumer's name, they could</p> <p>2 see that it was a Plain Green loan. And I'm</p> <p>3 using this as an example, they could see that</p> <p>4 the account is inactive. I actually believe</p> <p>5 it might be all red or highlighted, if you</p> <p>6 will. But if there is another account, X,Y,Z</p> <p>7 that is eligible to be collected or whatnot,</p> <p>8 the information associated to that account</p> <p>9 would be available to the collector.</p> <p>10 Q. It would or would not be?</p> <p>11 A. It would be. I feel like you're</p> <p>12 confused with that answer.</p> <p>13 Q. I think it just may be that I lost track</p> <p>14 of your answer. The collector does not have</p> <p>15 access to that Plain Green information, other</p> <p>16 than the fact that this person had a Plain</p> <p>17 Green loan, right? Is that what you're</p> <p>18 saying?</p> <p>19 A. That's correct. They don't have any</p> <p>20 access to anything that could harm that</p> <p>21 consumer, that they could utilize to either</p> <p>22 call that consumer -- they don't know the</p> <p>23 balance, they don't know --</p> <p>24 Q. Right, but the information is there and</p>

<p style="text-align: right;">Page 233</p> <p>1 it's accessible to some people in the company</p> <p>2 though, right?</p> <p>3 A. Yes.</p> <p>4 Q. What use is made of that information?</p> <p>5 A. Nothing material that I can --</p> <p>6 Q. Is it ever sold?</p> <p>7 A. No.</p> <p>8 Q. And then it looks like he's also saying</p> <p>9 that some of these -- some have been already</p> <p>10 moved to BHL D, and some of them it says: Need</p> <p>11 Recall. These are all FFW accounts. So this</p> <p>12 means that they need to be recalled from the</p> <p>13 agency that has them, right?</p> <p>14 A. You're still on --</p> <p>15 Q. I'm still on the same document.</p> <p>16 A. 97.</p> <p>17 Q. The initial e-mail from August 10th of</p> <p>18 2015 from Jack Mahoney. Do you see his first</p> <p>19 category is move to BHL D and the next category</p> <p>20 it says, Need Recall. When he says these are</p> <p>21 all FFW accounts, that means that they were</p> <p>22 sent out to an agency, right?</p> <p>23 A. Correct.</p> <p>24 Q. Allow agencies to keep current payers</p>	<p style="text-align: right;">Page 235</p> <p>1 form.</p> <p>2 BY MR. ACKELSBURG:</p> <p>3 Q. That's what it says, right?</p> <p>4 MR. DAUGHERTY: Same</p> <p>5 objection.</p> <p>6 THE WITNESS: They could keep</p> <p>7 the paying accounts. If the consumer made a</p> <p>8 payment, it would follow the same -- the way I</p> <p>9 read this, they would end up getting a fee out</p> <p>10 of it and the money should be remitted back to</p> <p>11 NCA.</p> <p>12 BY MR. ACKELSBURG:</p> <p>13 Q. Let's go back up to the accounts that</p> <p>14 are still with NCA. It's the same thing,</p> <p>15 right, because what Jack says is, these are</p> <p>16 all active accounts not forwarded, and with</p> <p>17 and then he emphasizes in italics, no active</p> <p>18 promise on file.</p> <p>19 So that would mean that the</p> <p>20 same thing applied -- the same rule was</p> <p>21 applied to the accounts that were in house,</p> <p>22 that if the consumer was paying, NCA accepted</p> <p>23 the money, right?</p> <p>24 A. That would insinuate that, yes.</p>
<p style="text-align: right;">Page 234</p> <p>1 but recall all others. What does that mean?</p> <p>2 A. The way I read that to mean would be to</p> <p>3 recall all accounts that are not in a current</p> <p>4 paying status, meaning the consumer hadn't</p> <p>5 agreed to set up a secured payment</p> <p>6 arrangement, is the way I read that.</p> <p>7 Q. Doesn't this mean that if people are, in</p> <p>8 fact paying, that the agency should continue</p> <p>9 to work the account?</p> <p>10 MR. DAUGHERTY: Objection to</p> <p>11 form.</p> <p>12 BY MR. ACKELSBURG:</p> <p>13 Q. Isn't that what that says?</p> <p>14 A. I don't read it that way. The way I</p> <p>15 read it and understand it, just the way that</p> <p>16 we approached it, I believe, is that there</p> <p>17 would not be future collection phone calls,</p> <p>18 activity made. If a consumer stopped paying,</p> <p>19 et cetera, that account would be immediately</p> <p>20 sent back to NCA.</p> <p>21 Q. Right. But if the consumer continued</p> <p>22 paying, the agency could keep the money,</p> <p>23 right?</p> <p>24 MR. DAUGHERTY: Objection to</p>	<p style="text-align: right;">Page 236</p> <p>1 Q. Has that continued? I mean how far into</p> <p>2 the future -- did there ever come a point</p> <p>3 where you stopped accepting payments from</p> <p>4 Pennsylvania Plain Green, Great Plains or</p> <p>5 Mobil Loans customers that were paying?</p> <p>6 MR. DAUGHERTY: Objection to</p> <p>7 form.</p> <p>8 THE WITNESS: I don't -- I</p> <p>9 can't speak specifically to a time that we</p> <p>10 completely stopped. I can't say that we</p> <p>11 haven't either.</p> <p>12 BY MR. ACKELSBURG:</p> <p>13 Q. What's this next category, APOC? These</p> <p>14 need to be closed and moved to BHL D. Do you</p> <p>15 know what APOC is?</p> <p>16 A. I don't.</p> <p>17 Q. What about SIF review?</p> <p>18 A. That would be settlement in full review.</p> <p>19 Q. What in full?</p> <p>20 A. Settlement in full. It's just a term,</p> <p>21 if a consumer would settle an account, if they</p> <p>22 had a debt for \$500 and we agreed to settle it</p> <p>23 for 100, we would consider it settled in full.</p> <p>24 So...</p>

<p style="text-align: right;">Page 237</p> <p>1 Q. So that's basically the same as people 2 that are paying, right? 3 MR. DAUGHERTY: Objection to 4 form. 5 THE WITNESS: I don't know 6 that to be true. I don't know -- in these 7 e-mails, and I understand Jack is the one that 8 has prepared them, he's using the term status 9 literally in one, two, three different ways. 10 I know status to be the 11 questions you were asking about, you know 12 ACOL, FFWD, those are account statuses. The 13 status of move to BHL D or move to SIF review, 14 I don't know if that's an action or a status 15 like FFWD. I can't answer that. 16 BY MR. ACKELSBURG: 17 Q. All right, and if you continue up the 18 e-mail chain, it looks like a few weeks later 19 Jack is letting the same group know that he 20 had forgotten to include Mobil Loans in the 21 last -- in the initial analysis, right? And 22 now you're getting the Mobil Loans numbers. 23 So this is an additional five million dollars 24 of loans that had been left off, right?</p>	<p style="text-align: right;">Page 239</p> <p>1 status, right? So let me make sure I 2 understand, of the 24 -- roughly 24.5 million 3 dollars in these various Think Finance 4 affiliated balances, 21.5 million was moved to 5 BHL D, right? 6 MR. DAUGHERTY: Objection to 7 form. 8 MR. DAUGHERTY: Object to 9 form. 10 BY MR. ACKELSBURG: 11 Q. Is that what -- 12 A. We're talking about the last e-mail that 13 Jack sent out including Mobil Loans? 14 Q. Yeah. 15 A. That's what it represents, 21.5 million. 16 Q. Or said in terms of just numbers of 17 accounts, there were 24,000 accounts that at 18 the time of the recall -- and these are 24,000 19 accounts that were in Pennsylvania with one of 20 these listed Think Finance products. 21 MR. DAUGHERTY: Object to 22 form. 23 MR. SHELTON: Objection to 24 form.</p>
<p style="text-align: right;">Page 238</p> <p>1 MR. DAUGHERTY: Objection to 2 form. 3 THE WITNESS: It appears that 4 way, yes. 5 BY MR. ACKELSBURG: 6 Q. Besides so his grand total, it looks 7 like of accounts is 24 -- roughly 24.5 million 8 dollars in balances, of all the Think products 9 combined? 10 MR. DAUGHERTY: Objection to 11 form. 12 MR. SHELTON: Objection to 13 form. 14 THE WITNESS: That's what 15 this is representing, yes. 16 BY MR. ACKELSBURG: 17 Q. And then so the right-hand side breaks 18 it out by product, right? 19 A. The right-hand side breaks it out by 20 issuer, is that what you're saying? 21 Q. Yeah, yeah, whatever, issuer or product? 22 A. Yes. 23 Q. And the left-hand side is showing where 24 the accounts are, that's what he means by</p>	<p style="text-align: right;">Page 240</p> <p>1 THE WITNESS: In one of these 2 statuses yes, that's what this is 3 representing. 4 BY MR. ACKELSBURG: 5 Q. Right, okay, in one of these statuses. 6 A. On this date -- that's what the -- 7 Q. If I wanted to know -- well, as of this 8 date, how many accounts -- how many accounts 9 representing how big a debt, a total debt, NCA 10 had of Think Finance products with 11 Pennsylvania consumers, it was roughly 24,000 12 different accounts for a total of 24.5 million 13 dollars in debt? 14 MR. DAUGHERTY: Objection to 15 form. 16 MR. SHELTON: Same objection. 17 THE WITNESS: Correct. 18 BY MR. ACKELSBURG: 19 Q. Of those roughly 20,000 or 20,230 20 accounts representing 21.5 million dollars in 21 balance, were put into this inactive status 22 called BHL D, correct? 23 MR. SHELTON: Object to form. 24 THE WITNESS: Correct, as of</p>

<p style="text-align: right;">Page 241</p> <p>1 this e-mail. 2 BY MR. ACKELSBURG: 3 Q. And as of this date, the remaining 4 accounts would have remained in some form of 5 active status? 6 MR. DAUGHERTY: Objection, 7 mischaracterizes the document. 8 MR. SHELDON: Object to form. 9 BY MR. ACKELSBURG: 10 Q. Am I right? 11 A. I don't know that you can make that leap 12 from just this e-mail. But based on the 13 status, ACOL would have been an active status. 14 Q. What does ACOL mean? 15 A. It's a collector owned account, meaning 16 the collector at some point in time had talked 17 to the consumer and taken ownership of it, 18 because the consumer may be calling them back 19 or making a payment. Those would be the ones 20 that I would consider that are in a payment 21 stream or payment status. 22 Q. So when you say, a collector owns the 23 account, meaning that the consumer -- the 24 collector has established a relationship with</p>	<p style="text-align: right;">Page 243</p> <p>1 Q. And then placed -- is placed in current 2 balance and the current balance would be, is 3 CNT current? I'm saying current but I don't 4 know what -- what is CNT balance? 5 MR. DAUGHERTY: Objection. 6 Irv, I think for the record that's a CRNT. 7 BY MR. ACKELSBURG: 8 Q. Oh good, so I was right, okay. 9 A. You are correct. 10 Q. So like with Great Plains, just so I 11 understand how to read this, that in total 12 there were -- there was on the system 2,731 13 accounts that were originally, at the time of 14 purchase were 3.5 million dollars in balances, 15 and that the current balances are roughly just 16 100,000 less. Is that how to read it? 17 A. Yes. 18 Q. What is -- 19 A. You can make an assumption of that, 20 yeah. 21 Q. What does the column, futures, refer to? 22 What does that mean, futures? 23 A. Futures would be future payments that 24 the consumer had set up and secured, whether</p>
<p style="text-align: right;">Page 242</p> <p>1 the consumer, such that the consumer is either 2 paying or the collector has an expectation 3 that the consumer will pay? 4 A. That's a good representation of it or 5 understanding, yes. 6 Q. Now let's look at the next Exhibit P-98. 7 And this is now covering the Pennsylvania 8 accounts, this is, I guess, updated 9 information four months later -- yeah, four 10 months later, three months later. 11 A. Okay. 12 Q. I'm trying to understand this -- I 13 assume the column on the left is providing 14 just how old the debt is, right, that's 1 to 15 90, 91 to 180 -- 16 A. -- old in the sense of from when we 17 purchased it. 18 Q. Oh, I see. So this doesn't -- this 19 doesn't connect back to -- 20 A. -- origination. 21 Q. The origination, I see. So this goes 22 back to whenever that particular Annex -- the 23 particular sale of that debt to NCA was? 24 A. Correct.</p>	<p style="text-align: right;">Page 244</p> <p>1 it be ACH or credit card. 2 Q. Tell me what this means. I'm a little 3 confused here. Here is what I interpret and 4 tell me if I'm correct, that with regard -- 5 that as of this point in time, in December of 6 2015, let me start over. 7 What are we looking at, the 8 accounts that are active, inactive, both? 9 What are we looking at here? 10 A. I don't know that I can tell what 11 necessarily we're looking at, because it's 12 what's being displayed, at least in the 13 printout of the e-mail. Now there's an 14 attachment, it looks like with a file, sent to 15 Brad, Shawn and Mark. 16 The e-mail states that 17 there's filters -- there must have been a 18 discussion -- project to bill this and provide 19 a summary this way. I can't speak to really 20 -- the assumptions you made as far as if the 21 placed -- face value or face amount, the three 22 million 530 is now three million 390. To make 23 the assumption that the difference would have 24 been collected and/or, you know, an account</p>

<p style="text-align: right;">Page 245</p> <p>1 that moves off the floor because of a dispute, 2 cease and desist or an account that just gets 3 written off, potentially could reduce that 4 balance, as well. 5 Q. Does this mean that as of December 2015, 6 December 3rd of 2015, there was estimated to 7 be \$104,000 in payments still to be received 8 by active Pennsylvania borrowers? 9 MR. DAUGHERTY: Objection to 10 form. 11 BY MR. ACKELSBURG: 12 Q. If you look at the futures added up, I 13 think you get a sum on the last page. 14 A. You can make that assumption, yes, that 15 is correct. It's Pennsylvania consumers, 16 either state placed or current residence. 17 Q. In preparation for your deposition 18 today, did you look at what that futures 19 number is for Pennsylvanians today? 20 A. I did not. To be honest, I assumed that 21 they were all removed and not -- 22 Q. So this is a surprise to you? 23 A. Well, it's not necessarily a surprise to 24 me, I still believe that there's not futures</p>	<p style="text-align: right;">Page 247</p> <p>1 that a spreadsheet was cut and pasted into the 2 body of the e-mail, and then that e-mail was 3 forwarded. The attachment doesn't seem to be 4 forwarded. I'm happy to look for the December 5 3rd, 2015, 2:56 p m. e-mail and see if we can 6 get you the .XLSX file that accompanied it, if 7 it hasn't already been produced. 8 BY MR. ACKELSBURG: 9 Q. Now do you know if there was any 10 transaction with regard to the recall that 11 included money transferred, being transferred? 12 MR. DAUGHERTY: Objection to 13 form. 14 THE WITNESS: Money 15 transferred on recall? 16 BY MR. ACKELSBURG: 17 Q. In other words, did NCA receive money 18 from either Think or the tribes or someone 19 with regard to the debts that were being put 20 in inactive status? 21 A. No. 22 Q. Did NCA buy tribal related loans from 23 any of the companies associated with Scott 24 Tucker?</p>
<p style="text-align: right;">Page 246</p> <p>1 -- but this is a 2015 December e-mail from a 2 decision that Shawn Gylling and Brad Hochstein 3 made. 4 Q. Do you remember making any decision to 5 reverse that decision to stop accepting money 6 from Pennsylvania, Plain Green, Great Plain or 7 Mobil Loans customers? 8 A. I don't know that I specifically made 9 that decision, but we had many discussions 10 about these types of scenarios and how we want 11 to do things the right way. So -- it's the 12 first call I want to make as I leave here. 13 MR. ACKELSBURG: Patrick, 14 without getting into the issue of an 15 additional written discovery request, we have 16 already made certain discovery requests, 17 clearly there was at least a file here that 18 wasn't produced that's attached. We would ask 19 for any -- as within the scope of discovery 20 that was requested probably a year ago, I 21 would ask for all files connected to the 22 Pennsylvania accounts. 23 MR. DAUGHERTY: Look Irv, I 24 think what this e-mail looks like to me is</p>	<p style="text-align: right;">Page 248</p> <p>1 A. Not to my knowledge. 2 Q. So that includes Ameri Loans, United 3 Cash Loans, US Fast Cash, Preferred Cash, One 4 Click Cash, Miami Tribe of Oklahoma, Santee 5 Sioux Nation, these aren't products that you 6 think are on the NCA system or were on the NCA 7 system? 8 A. Not to my knowledge. I don't recall 9 that. I didn't prep for that. 10 Q. What about Cash Call? 11 A. Cash Call, we did buy some Cash Call, as 12 well as Western Sky. 13 Q. That would include the Western Sky 14 originated loans. Okay. What about the 15 tribal loans associated with Charlie Hallinan? 16 MR. DAUGHERTY: Objection to 17 form. 18 THE WITNESS: The name 19 doesn't sound familiar. To my knowledge, 20 there is a list of about four or five, maybe 21 six other products that were considered 22 tribal. But the volumes of them were quite 23 small. 24 BY MR. ACKELSBURG:</p>

<p style="text-align: right;">Page 249</p> <p>1 Q. Would it be fair to say that the largest 2 volume of your tribal were the three Think 3 products that we have been discussing? 4 MR. SHELDON: Object to form. 5 THE WITNESS: I would say 6 that the largest volume would be the Plain 7 Green, Great Plains and Mobil Loans. 8 BY MR. ACKELSBURG: 9 Q. You did buy loans from -- you did buy 10 loans from Adrian Rubin, didn't you? 11 MR. DAUGHERTY: Objection, 12 beyond the scope of the deposition notice? 13 BY MR. ACKELSBURG: 14 Q. Tribal loans. 15 A. To be honest, I don't know whether we 16 did we or didn't. I don't know who Adrian 17 Rubin is. 18 Q. What about -- have you ever heard of 19 HNIC Services? 20 A. I can say that I haven't. 21 Q. Tribal Ventures Management Group? 22 A. I have not. 23 Q. With regard to Charlie Hallinan, I am 24 going to give you names of products and tell</p>	<p style="text-align: right;">Page 251</p> <p>1 MR. DAUGHERTY: Objection to 2 form. 3 THE WITNESS: Honestly, I 4 don't know that I know that answer either. 5 Combined there are a handful of travel 6 products that we purchased over the years. I 7 think we collected a total of \$60,000, if that 8 gives you context to gross volume. 9 Q. Is that all tribal products, including 10 Think Finance? 11 A. No. 12 MR. DAUGHERTY: Objection to 13 form. 14 THE WITNESS: Outside of 15 Think Finance and Great Plains, Plain Green -- 16 BY MR. ACKELSBURG: 17 Q. Have you analyzed how much you've 18 collected from the three Think Finance 19 products we have been discussing? 20 MR. DAUGHERTY: Objection to 21 form. 22 MR. SHELDON: Object to form. 23 MR. DAUGHERTY: Tyler, 24 understanding that when Irv says Think Finance</p>
<p style="text-align: right;">Page 250</p> <p>1 me if this sounds familiar. 2 A. Okay. 3 Q. MTE Financial? 4 A. That doesn't sound familiar. 5 Q. Cash Advance Network? 6 A. It sounds familiar only because a lot of 7 names are Cash Advance something. 8 Q. Instant Cash USA? 9 A. These are tribal products is what you're 10 telling me? 11 Q. Yes. 12 A. They don't. 13 Q. Paycheck Today? 14 A. No. 15 Q. Apex One Processing, does that sound 16 familiar? 17 A. It does not. 18 Q. 5th Avenue Financial, Tribal Lending 19 Enterprise, Sequoia Tribal Enterprises? 20 A. It does not. 21 Q. If the Think related tribal products 22 were your biggest -- was the biggest portion 23 of the tribal portfolio, what was the second 24 biggest, would that have been Cash Call?</p>	<p style="text-align: right;">Page 252</p> <p>1 products, he means Great Plains, Plain Green 2 and Mobil Loans, you can answer the question. 3 BY MR. ACKELSBURG: 4 Q. You understood that, didn't you? 5 A. Yes. 6 Q. Okay. 7 A. The last question, can you repeat that? 8 Sorry. 9 Q. How much has -- since it began -- since 10 back in 2012 when Brad Horrocks first started 11 selling the Think Cash loans, how much has NCA 12 collected off of the relationship with Think 13 Finance? 14 MR. SHELDON: Object to form. 15 Continuing objection. 16 MR. DAUGHERTY: Object to 17 form. 18 THE WITNESS: As it relates 19 to Pennsylvania, 4.4 million dollars. 20 MR. DAUGHERTY: Hold on, Irv, 21 I need to get this on the record, Irv, because 22 the witness, I think was asked to prepare very 23 specifically for Pennsylvania collections, not 24 gross collections in the United States. So</p>

<p style="text-align: right;">Page 253</p> <p>1 numbers you're going to get from him are ones</p> <p>2 that he prepped in response to your topic,</p> <p>3 which was Pennsylvania specific.</p> <p>4 BY MR. ACKELSBURG:</p> <p>5 Q. So the 4.4 million, was that</p> <p>6 Pennsylvania?</p> <p>7 A. Yes.</p> <p>8 Q. What is the national number, if you know</p> <p>9 it?</p> <p>10 MR. DAUGHERTY: Objection,</p> <p>11 beyond the scope of the deposition?</p> <p>12 THE WITNESS: I don't know it</p> <p>13 off the top of my head.</p> <p>14 MR. ACKELSBURG: I have no</p> <p>15 further questions.</p> <p>16 MR. DAUGHERTY: None for me.</p> <p>17 VIDEOTAPE OPERATOR: That</p> <p>18 concludes this deposition, the time is 4:44</p> <p>19 p.m. We are off the record.</p> <p>20 - - -</p> <p>21 (Whereupon the deposition</p> <p>22 concluded at 4:44 p.m.)</p> <p>23 - - -</p> <p>24</p>	<p style="text-align: right;">Page 255</p> <p>1 CERTIFICATE</p> <p>2 - - -</p> <p>3 I, Jeannine Cancelliere, Court</p> <p>4 Reporter and Notary Public and for</p> <p>5 Philadelphia, Pennsylvania, do hereby certify</p> <p>6 that the foregoing testimony of LEE TYLER</p> <p>7 REMPEL, was taken before me at 1600 Arch</p> <p>8 Street, Suite 300, Philadelphia, Pennsylvania</p> <p>9 on Wednesday, April 11, 2018; that the</p> <p>10 foregoing testimony was taken by me in</p> <p>11 shorthand by myself and reduced to typing</p> <p>12 under my direction and control, that the</p> <p>13 foregoing pages contain a true and correct</p> <p>14 transcription of all of the testimony of said</p> <p>15 witness.</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p style="text-align: center;">.....</p> <p style="text-align: center;">JEANNINE CANCELLIERE</p> <p style="text-align: center;">Notary Public</p> <p style="text-align: center;">My commission expires</p> <p style="text-align: center;">October 13, 2019</p>
<p style="text-align: right;">Page 254</p> <p>1 Read your deposition over carefully. It is</p> <p>2 your right to read your deposition and make</p> <p>3 changes in form or substance. You should</p> <p>4 assign a reason in the appropriate column on</p> <p>5 the errata sheet for any change made. After</p> <p>6 making any change in form or substance which</p> <p>7 has been noted on the following errata sheet</p> <p>8 along with the reason for any change, sign</p> <p>9 your name on the errata sheet and date it.</p> <p>10 Then sign your deposition at the end of your</p> <p>11 testimony in the space provided. You are</p> <p>12 signing it subject to the changes you have</p> <p>13 made in the errata sheet, which will be</p> <p>14 attached to the deposition before filing. You</p> <p>15 must sign it in front of a witness. Have the</p> <p>16 witness sign in the space provided. The</p> <p>17 witness need not be a notary public. Any</p> <p>18 competent adult may witness your signature.</p> <p>19 Return the original errata sheet & transcript</p> <p>20 to deposing attorney, (attorney asking</p> <p>21 questions) promptly. Court rules require</p> <p>22 filing within 30 days after you receive the</p> <p>23 deposition. Thank you.</p> <p>24</p>	<p style="text-align: right;">Page 256</p> <p>1 I have read the foregoing deposition</p> <p>2 and the answers given by me are true and</p> <p>3 correct, to the best of my knowledge and</p> <p>4 belief.</p> <p>5</p> <p>6</p> <p>7</p> <p>8</p> <p>9</p> <p>10</p> <p>11</p> <p>12</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p style="text-align: center;">.....</p> <p style="text-align: center;">LEE TYLER REMPEL</p> <p style="text-align: center;">Witness to signature</p> <p style="text-align: center;">Address</p> <p style="text-align: center;">My Commission expires</p> <p style="text-align: center;">.....</p>

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UNITED STATES DISTRICT COURT
FOR THE
EASTERN DISTRICT OF PENNSYLVANIA

COMMONWEALTH OF PENNSYLVANIA,)	
By Attorney General)	
JOSH SHAPIRO,)	
)	
Plaintiff,)	CIVIL ACTION
)	NO.14-cv-07139-JCJ
v.)	
)	
THINK FINANCE, INC., et al.,)	
)	
Defendants.)	
_____)	

Videotaped Deposition of BOBBI JO FAVEL
Great Falls, Montana
Tuesday, June 19, 2018 - 1:02 p.m.

Reported by:
Bambi A. Goodman
Job no: 21969

<p style="text-align: right;">Page 2</p> <p>1 On Tuesday, June 19, 2018, beginning at 2 1:02 p.m., the videotape deposition of BOBBI JO FAVEL, 3 appearing at the insistence of Defendant Think Finance, 4 was taken at The Mansfield Center for the Performing 5 Arts, 2 Park Drive South, Great Falls, Montana, pursuant 6 to the Federal Rules of Civil Procedure, before Bambi A. 7 Goodman, Registered Professional Reporter, Certified 8 Realtime Reporter, Notary Public and John Nordhagen, 9 videographer. 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25</p>	<p style="text-align: right;">Page 4</p> <p>1 Patrick Daugherty, Of Counsel 2 VAN NESS FELDMAN, LLP 3 1050 Thomas Jefferson Street, NW, 7th Floor 4 Washington, DC 20007 5 pod@vnf.com 6 personally appeared on behalf of Defendant 7 National Credit Adjusters. 8 9 Patrick M. Smith, Esq. 10 KATTEN MUCHIN ROSENMAN, LLP 11 525 West Monroe Street 12 Chicago, IL 60661 13 patrick.smith@kattenlaw.com 14 personally appeared on behalf of Defendants GPLS 15 and Victory Park. 16 17 18 19 20 21 22 23 24 25</p>
<p style="text-align: right;">Page 3</p> <p>1 APPEARANCES 2 3 John J. Grogan, Esq. 4 LANGER GROGAN & DIVER, PC 5 1717 Arch Street, Suite 4020 6 Philadelphia, PA 19103 7 jgrogan@langergrogan.com 8 personally appeared on behalf of Plaintiff. 9 10 Matthew O. Gatewood, Esq. 11 EVERSLEDs SUTHERLAND, LLP 12 700 Sixth Street, NW, Suite 700 13 Washington, DC 20001 14 matthewgatewood@eversheds-sutherland.com 15 personally appeared on behalf of Defendant 16 Think Finance. 17 18 Richard L. Scheff, Esq. and David F. Herman, Esq. 19 MONTGOMERY MCCrackEN 20 1735 Market Street, 21st Floor 21 Philadelphia, PA 19103 22 rscheff@mmwr.com 23 personally appeared on behalf of Defendant 24 Kenneth Rees. 25</p>	<p style="text-align: right;">Page 5</p> <p>1 INDEX 2 WITNESS: PAGE: 3 BOBBI JO FAVEL, 4 Examination by Mr. Gatewood 7 5 6 EXHIBITS: 7 Deposition Exhibit No. 41 8 Bates TF-PA-303899-900; 11/21/2012 B. 9 Favel Email 10 marked for identification 26 11 12 Deposition Exhibit No. 42 13 Bates TF-PA-569172; 6/10-11/2012 14 Email Chain 15 marked for identification 30 16 Deposition Exhibit No. 43 17 Bates TF-PA-378414-8417; 5/30/2012 B. 18 Favel Email With Attachment 19 marked for identification 33 20 21 Deposition Exhibit No. 44 22 Bates TF-PA-319516-517; 1/30/2013 B. 23 Favel Email 24 marked for identification 54 25</p>

2 (Pages 2 to 5)

<p style="text-align: right;">Page 6</p> <p>1</p> <p>2 THE VIDEOGRAPHER: The time is 1:02 p.m.</p> <p>3 We are on the record. This is tape number one of the</p> <p>4 videotape deposition of Bobbi Jo Favel in the matter of</p> <p>5 Commonwealth of Pennsylvania versus Think Finance, Inc.,</p> <p>6 et al. This is Civil Action Number 14-cvV-07139-JCJ in</p> <p>7 the United States District Court for the Eastern District</p> <p>8 of Pennsylvania.</p> <p>9 This deposition is being taken on Tuesday, the</p> <p>10 19th day of June, 2018 at Mansfield Center for the</p> <p>11 Performing Arts, 2 Park Drive South in Great Falls,</p> <p>12 Montana.</p> <p>13 The videographer is John Nordhagen. The court</p> <p>14 reporter is Bambi Goodman.</p> <p>15 Counsel will now introduce themselves after</p> <p>16 which the court reporter will swear in the witness.</p> <p>17 MR. GATEWOOD: Matthew Gatewood on behalf</p> <p>18 of the Think Finance, Defendants.</p> <p>19 MR. HERMAN: David Herman on behalf of</p> <p>20 Kenneth Rees.</p> <p>21 MR. SMITH: Patrick Smith in behalf of GPLS</p> <p>22 and Victory Park, Defendants.</p> <p>23 MR. DAUGHERTY: Patrick Daugherty on behalf</p> <p>24 of National Credit Adjusters.</p> <p>25 MR. SCHEFF: Richard Scheff for Kenneth</p>	<p style="text-align: right;">Page 8</p> <p>1 questions truthfully?</p> <p>2 A Yes.</p> <p>3 Q And if you don't understand one of my</p> <p>4 questions, please let me know that; okay?</p> <p>5 A Yes.</p> <p>6 Q And because this deposition is having a</p> <p>7 transcript typed out as you and I speak, you can't say</p> <p>8 Uh-huh, or anything like that or head nods, for example.</p> <p>9 You have to actually provide yes or no answers. Do you</p> <p>10 understand that?</p> <p>11 A Yes, I do.</p> <p>12 Q At some point in your career did you work for</p> <p>13 Plain Green, LLC?</p> <p>14 A Yes, I did.</p> <p>15 Q And do you remember when you started at Plain</p> <p>16 Green?</p> <p>17 A Yes. I started in February of 2012.</p> <p>18 Q And when was your last day?</p> <p>19 A March 26, 2013.</p> <p>20 Q What was your title or role during that time?</p> <p>21 A I was the compliance -- regulatory compliance</p> <p>22 officer.</p> <p>23 Q Were you the regulatory compliance officer from</p> <p>24 February 2012 through March 2013?</p> <p>25 A When I first started, I was just compliance.</p>
<p style="text-align: right;">Page 7</p> <p>1 Rees.</p> <p>2 MR. GROGAN: John Grogan for the</p> <p>3 Commonwealth of Pennsylvania.</p> <p>4 THE WITNESS: Bobbi Favel.</p> <p>5 BOBBI JO FAVEL,</p> <p>6 having been first duly sworn to testify to the truth, the</p> <p>7 whole truth and nothing but the truth, testified upon her</p> <p>8 oath as follows:</p> <p>9 EXAMINATION</p> <p>10 BY MR. GATEWOOD:</p> <p>11 Q Ms. Favel, good afternoon. My name's Matt</p> <p>12 Gatewood, and I represent the Think Finance Defendants,</p> <p>13 and I'll be the primary questioner of your deposition</p> <p>14 this afternoon.</p> <p>15 A Okay.</p> <p>16 Q Are you a member of the Chippewa Cree Tribe?</p> <p>17 A Yes, I am.</p> <p>18 Q And do you live on the reservation?</p> <p>19 A Yes, I do.</p> <p>20 Q Have you ever been deposed before?</p> <p>21 A No.</p> <p>22 Q Do you understand the oath that you were just</p> <p>23 administered?</p> <p>24 A Yes.</p> <p>25 Q And that your obligation is to answer my</p>	<p style="text-align: right;">Page 9</p> <p>1 And then we added that regulatory title a couple months</p> <p>2 after that.</p> <p>3 Q So around April, May of 2012?</p> <p>4 A Probably more July.</p> <p>5 Q Of 2012?</p> <p>6 A A little later, yes.</p> <p>7 Q What type of educational background do you</p> <p>8 have?</p> <p>9 A I have a law degree from the University of</p> <p>10 Montana.</p> <p>11 Q Do you have an undergraduate degree as well?</p> <p>12 A I have an undergraduate degree in research</p> <p>13 management from the University of Montana as well.</p> <p>14 Q Did you take any time off between undergrad and</p> <p>15 law school, or did you go straight through?</p> <p>16 A I took approximately five years off.</p> <p>17 Q What did you do during that time?</p> <p>18 A I was a forester for the Confederated Salish</p> <p>19 and Kootenai Tribes.</p> <p>20 Q Where is that located?</p> <p>21 A In Flathead, Montana. Ronan specifically,</p> <p>22 Ronan, Montana.</p> <p>23 Q Why did you go to law school?</p> <p>24 A I don't know. Well, I had an environmental</p> <p>25 background and I actually wanted to go and get the Indian</p>

3 (Pages 6 to 9)

<p style="text-align: right;">Page 18</p> <p>1 and talk about them in a little bit greater details.</p> <p>2 A Okay.</p> <p>3 Q So can you help me come up with that list of</p> <p>4 everything that you can remember that you were</p> <p>5 responsible for or that you did at Plain Green.</p> <p>6 A Okay. So of course the SOPs, the operating.</p> <p>7 Q Those are standard operating procedures?</p> <p>8 A Procedures, yeah. So basically we were to</p> <p>9 develop a manual with those for each -- for issues</p> <p>10 that -- well, not issues, but I guess for how -- the</p> <p>11 procedure of how things were supposed to be done with the</p> <p>12 loans; how everything moved. We developed -- we started</p> <p>13 working on a flowchart for the tribal -- for the -- well</p> <p>14 not only the council but the board, the board of</p> <p>15 directors, which was mostly made up of tribal council</p> <p>16 members.</p> <p>17 Q Okay; and we'll come back to that. Let's just</p> <p>18 try to get the list together now of everything that you</p> <p>19 did, and then we'll come back and ask more detailed</p> <p>20 questions.</p> <p>21 A Okay. So yeah, the flowchart of how the loans</p> <p>22 worked, how the fund was to be, I guess, utilized for the</p> <p>23 loans, how many days it took for the loans to go out and</p> <p>24 come back, the payments. Gosh, forgive me. It's been a</p> <p>25 long time since I thought about some of this stuff. Oh,</p>	<p style="text-align: right;">Page 20</p> <p>1 Gordon -- I don't think it was Jones. So they were on</p> <p>2 pretty much all the calls. It was mostly with them.</p> <p>3 When we actually talked to Think Finance, they weren't on</p> <p>4 those calls.</p> <p>5 Q Okay. So you would have compliance calls with</p> <p>6 just employees from Plain Green and FACR.</p> <p>7 A Uh-huh.</p> <p>8 Q Without any outside individuals.</p> <p>9 A Uh-huh.</p> <p>10 Q Is that a yes?</p> <p>11 A Yes; sorry.</p> <p>12 MR. GROGAN: Objection to form.</p> <p>13 Q (By Mr. Gatewood) You said you worked with the</p> <p>14 tribal attorney Dan Belcourt. What types of issues would</p> <p>15 you work with him on?</p> <p>16 A Contracts. He was to provide input on a lot of</p> <p>17 the contracts with the different service providers,</p> <p>18 Decision Science, Victory Park. There was a</p> <p>19 number -- there were a number of different contracts that</p> <p>20 we had that he provided input on and reviewed.</p> <p>21 Q Did you rely on his expertise in helping review</p> <p>22 contracts?</p> <p>23 A Yes.</p> <p>24 Q What other lawyers did you work with from Plain</p> <p>25 Green?</p>
<p style="text-align: right;">Page 19</p> <p>1 what else did we do?</p> <p>2 Q You worked on complaints?</p> <p>3 A Yeah, we did complaints. We had an account</p> <p>4 through the BBB that we could log into and see if there</p> <p>5 were any new complaints. So we would address those as</p> <p>6 they came.</p> <p>7 Also, there was another business that I worked</p> <p>8 a lot on as well, FACR, First American Capital Resources,</p> <p>9 which was the tribe's lending business. So I was also</p> <p>10 working on -- we were kind of mirroring. We figured if</p> <p>11 we -- if we developed this stuff on the Think</p> <p>12 Finance -- on the Plain Green side of it, then we could</p> <p>13 also use that on the FACR side of it too. So there was a</p> <p>14 lot of back-and-forth. Worked with the tribal</p> <p>15 attorney -- or the Plain Green attorney, excuse me, who</p> <p>16 was a tribal attorney as well.</p> <p>17 Q And who was that?</p> <p>18 A His name's Dan Belcourt. We had conference</p> <p>19 calls almost every day that I participated in for</p> <p>20 compliance.</p> <p>21 Q With just Plain Green employees?</p> <p>22 A No. No, usually the FACR folks were on those</p> <p>23 calls with us, Lee Broome or Gordon --</p> <p>24 Q Is it Gordon Jones?</p> <p>25 A I don't remember if it was Jones. Is it Jones?</p>	<p style="text-align: right;">Page 21</p> <p>1 A I can only remember him at the time for Plain</p> <p>2 Green.</p> <p>3 Q Did you work with Robin Kovash?</p> <p>4 A I think -- I remember meeting with Robin. No,</p> <p>5 that wasn't on a Plain Green issue, that was a different</p> <p>6 tribal. But Robin -- and I know Robin. But he -- no, he</p> <p>7 didn't work with -- while I was there, he didn't help us</p> <p>8 with anything, to my knowledge, as far as where those --</p> <p>9 Q Okay; what about Leann Montes?</p> <p>10 A She -- she did work on a few things with Dan.</p> <p>11 She wasn't as involved though. She wasn't there every</p> <p>12 day or at every meeting. It was just kind of sporadic</p> <p>13 with Leann.</p> <p>14 Q What about Rick Eckman?</p> <p>15 A Nope. Rick Eckman attended the OLA</p> <p>16 meeting -- or the NAFSA meeting; sorry. Native American</p> <p>17 Financial Services Association; sorry. He attended those</p> <p>18 meetings and would sit in on the smaller sessions with</p> <p>19 the tribe and with Think Finance. But I don't recall him</p> <p>20 actually participating in our operations, contracts,</p> <p>21 things like that.</p> <p>22 Q Okay. So on the list of items that I have that</p> <p>23 you remember doing at Plain Green, I've got SOPs,</p> <p>24 payments, complaints, working with the tribal attorneys,</p> <p>25 conference calls for compliance. Did you have anything</p>

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<p style="text-align: right;">Page 22</p> <p>1 else we can add to the list?</p> <p>2 A The contracts. We'd all review the contracts,</p> <p>3 do mark-ups on them, questions if we had them. Contract</p> <p>4 review.</p> <p>5 Q And that's contracts not just with Think</p> <p>6 Finance but with all of Plain Green's vendors?</p> <p>7 A The third-party service providers.</p> <p>8 Q Did you have any responsibility for approvals</p> <p>9 of various items?</p> <p>10 A No, just input, not any kind of approvals for</p> <p>11 anything. Everything had to go through Billi Ann for</p> <p>12 approval.</p> <p>13 Q What about with respect to any responsibility</p> <p>14 for wire transfers?</p> <p>15 A No, that was not my department. That was</p> <p>16 another person's responsibility to do the loans, the</p> <p>17 approvals and things of that such.</p> <p>18 Q Who was that?</p> <p>19 A Neal Rosette, Junior.</p> <p>20 Q He was responsible for actually approving the</p> <p>21 Plain Green loans?</p> <p>22 A No, not the Plain Green loans. He did the FACR</p> <p>23 loans. I don't think -- he may have. I couldn't tell</p> <p>24 you for certain if he was doing the Plain Green loans as</p> <p>25 well.</p>	<p style="text-align: right;">Page 24</p> <p>1 A Uh-huh, yes.</p> <p>2 Q What types of input would you provide?</p> <p>3 A I guess just reading through things, like I</p> <p>4 said, to check for accuracy of information. It</p> <p>5 wasn't -- it wasn't a whole lot. Like I said, a lot of</p> <p>6 it came that was already done and ready to go. I mean,</p> <p>7 obviously they people knew what they were doing, so it</p> <p>8 wasn't like we really knew what we were supposed to be</p> <p>9 looking for. I felt it was more just a formality than,</p> <p>10 you know, to say that Well, somebody from the tribe</p> <p>11 looked at it and said it was okay.</p> <p>12 Q But it's fair to say that when Think Finance</p> <p>13 would provide Plain Green with some information, that</p> <p>14 before Plain Green would actually approve it, they would</p> <p>15 review it.</p> <p>16 Start over?</p> <p>17 It's fair to say that when Think Finance</p> <p>18 provided Plain Green with some type of information, it</p> <p>19 needed to be approved, that Plain Green would actually</p> <p>20 review the information before approving it.</p> <p>21 MR. GROGAN: Objection to form.</p> <p>22 THE WITNESS: I would say that is not</p> <p>23 accurate in the sense that we weren't approving -- there</p> <p>24 wasn't a time where we were ever going to say No, we're</p> <p>25 not approving this. That information came to us already</p>
<p style="text-align: right;">Page 23</p> <p>1 Q But it was someone else other than yourself --</p> <p>2 A Yep.</p> <p>3 Q -- that was responsible for approving the Plain</p> <p>4 Green loans.</p> <p>5 A Yes. I didn't have anything to do with the</p> <p>6 daily approvals on loans or anything like that.</p> <p>7 Q Did you have any responsibility for approving</p> <p>8 marketing campaigns?</p> <p>9 A I wouldn't say approving, but I did have input.</p> <p>10 They would send me what they call, I believe, rollouts</p> <p>11 for each month. They would send them out to all of us</p> <p>12 and we'd look through them and look at them. And if we</p> <p>13 see any typos or anything that didn't look accurate as</p> <p>14 far as information-wise. Otherwise, I mean, they would</p> <p>15 send them to us just to review. They were already done.</p> <p>16 Q Just to clarify, the "they" in that sentence --</p> <p>17 A Think Finance.</p> <p>18 Q -- is Think Finance.</p> <p>19 A Yeah. One of their subsidiaries, TC Decisions,</p> <p>20 I think it was. I think there was a Tailwind, Tailwind</p> <p>21 Marketing too.</p> <p>22 Q And on any of these items where the tribe would</p> <p>23 have to approve something, you said you provided input,</p> <p>24 even though you may not have been the person actually</p> <p>25 approving it.</p>	<p style="text-align: right;">Page 25</p> <p>1 packaged and ready to go. Basically, I felt like we were</p> <p>2 just looking at it and saying This looks good, because</p> <p>3 that's what we were supposed to do.</p> <p>4 Q (By Mr. Gatewood) But as the compliance -- the</p> <p>5 individual focused on compliance at Plain Green, you</p> <p>6 would not be comfortable approving something without</p> <p>7 actually looking at it.</p> <p>8 A Well, first of all, I didn't have any kind of a</p> <p>9 compliance training as to what the work was actually</p> <p>10 entailing. When we worked with Think Finance, who was</p> <p>11 already established in this industry, the thinking was</p> <p>12 that we were going to be taught these things. So when</p> <p>13 somebody sends you something and says We need an</p> <p>14 approval, in my opinion, we're not going to say No. It</p> <p>15 will be approved because they're the experts and they're</p> <p>16 sending us something that they've done hundreds, if not</p> <p>17 thousands, of times. So we're going to approve it.</p> <p>18 There wasn't ever a time where I said No, this doesn't</p> <p>19 look good. It was always approved. Sorry; I don't know</p> <p>20 if that was your actual question but --</p> <p>21 Q No, that's okay.</p> <p>22 Can you describe how the compliance process</p> <p>23 changed from the time you started at Plain Green to the</p> <p>24 time that you stopped working there?</p> <p>25 A Well, we added another employee to help with</p>

7 (Pages 22 to 25)

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

COMMONWEALTH OF PENNSYLVANIA *
BY ATTORNEY GENERAL JOSH *
SHAPIRO, *
Plaintiff, *

VS. * Civil Action
* No. 14-7139-JCJ
THINK FINANCE, INC., et al., *
Defendants. *

ORAL AND VIDEOTAPED DEPOSITION OF
JASON HARVISON
APRIL 17, 2018

DEPOSITION of JASON HARVISON, produced
as a witness at the instance of the Plaintiff, and
duly sworn, was taken in the above-styled and
numbered cause on the 17th day of April, 2018, from
8:53 a.m. to 4:22 p.m., before Christy R. Sievert,
CSR, RPR, in and for the State of Texas, reported by
machine shorthand, at the Fort Worth Club, 306 West
7th Street, Fort Worth, Texas 76102, pursuant to the
Federal Rules of Civil Procedure and the provisions
stated on the record or attached hereto.

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(continued)

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KEVIN BYERS

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1 THE VIDEOGRAPHER: We are now on the
2 record for the videotaped deposition of Jason
3 Harvison. The time is 8:53 a.m., April 17, 2018, in
4 the matter of Commonwealth of Pennsylvania, et al.,
5 vs. Think Finance, et al., Case No. 14-7139-JCJ,
6 being held in the United States Eastern District of
7 Pennsylvania.

8 The court reporter is Christy Sievert, and
9 the videographer is Gus Phillips. Both are
10 representatives of Kaplan Leaman & Wolfe Court
11 Reporters.

12 Will counsel please state their
13 appearances for the record.

14 MR. ACKELSBURG: Irv Ackelsberg for
15 the Commonwealth of Pennsylvania.

16 MR. GROGAN: John Grogan, also for the
17 Commonwealth.

18 MR. MIRARCHI: Saverio Mirarchi for
19 the Commonwealth of Pennsylvania.

20 MR. DAUGHERTY: Andrew Daugherty on
21 behalf of National Credit Adjusters.

22 MR. HAWS: Matthew Haws on behalf of
23 the Victory Park defendants.

24 MR. SHAPIRO: Daniel Shapiro for the
25 Victory Park defendants.

1 MR. GATEWOOD: Matthew Gatewood for
2 the Think Finance defendants.

3 MR. HERMAN: David Herman on behalf of
4 Kenneth E. Rees.

5 MR. SCHEFF: Richard Scheff for Jason
6 Harvison.

7 THE VIDEOGRAPHER: Counsel on the
8 phone?

9 MR. SCHEFF: There's no -- one of the
10 Victory Park guys, one of the clients.

11 THE VIDEOGRAPHER: Will the court
12 reporter please administer the oath.

13 JASON HARVISON
14 having been first duly sworn,
15 testified as follows:
16 EXAMINATION
17 BY MR. ACKELSBURG:
18 Q. Good morning, Mr. Harvison.
19 MR. SCHEFF: Hold on, we --
20 MR. ACKELSBURG: Yeah, we're going to
21 put on the record first.

22 MR. GATEWOOD: The parties have
23 conferred, and to facilitate the deposition process
24 and to avoid multiple disruptions per question, any
25 defendant that raises an objection; form, preserves

1 the objection with respect to all other defendants
2 as well, and the parties have agreed on that.

3 MR. ACKELSBURG: And I think we'll do
4 that -- you want to do that in -- going forward in
5 the other depositions so we won't even have to make
6 this statement going forward, right?

7 MR. GATEWOOD: That's right, it
8 will -- it will apply to all depositions.

9 MR. ACKELSBURG: Okay. Anything else
10 anyone wants to put on the record before we begin?

11 BY MR. ACKELSBURG:
12 Q. Good morning, Mr. Harvison.
13 A. Good morning.
14 Q. Welcome. I want to -- I'm Irv Ackelsberg,
15 as you know, representing the Commonwealth of
16 Pennsylvania.

17 Before we get into the substance of the
18 matters here, I want to -- I want to ask you a few
19 preliminary questions. The first is whether you
20 have been deposed before?

21 A. Yes, I have.
22 Q. Okay. And how many times?
23 A. Three separate times.
24 Q. Okay. And could you identify the three
25 times? And if you could, roughly, when it happened,

<p style="text-align: right;">Page 13</p> <p>1 who was taking your deposition, and what the matter 2 involved. 3 A. Sure. I'll be a little fuzzy on the first 4 two. They were quite -- quite a while ago. One was 5 just a civil matter where my house we built flooded. 6 So we sued the developer of the house and was 7 deposed as part of that. 8 Q. And that was a personal? 9 A. Personal, yeah. 10 Q. Okay. 11 A. And then probably about ten years ago, at 12 Think Finance we had an employee was -- was pushing 13 back for wrongful termination. So I was deposed in 14 that matter. 15 Q. Okay. 16 A. And then in the fall of 2016, I was deposed 17 by the CFPB. 18 Q. Okay. And that was regarding Think 19 Finance? 20 A. That was, yes. 21 Q. Okay. And do you remember who at the CFPB 22 took your deposition? 23 A. There was -- there was two representatives. 24 One was Ben Vaughn, I believe, and I can't remember 25 the other name.</p>	<p style="text-align: right;">Page 15</p> <p>1 work with you, too. 2 MR. SCHEFF: Yeah, no, I understand. 3 BY MR. ACKELSBURG: 4 Q. Did you review that transcript in preparing 5 for today? 6 A. I did -- I did read through it. 7 Q. You did read through it. Okay. Did you 8 read through -- did you review any other documents 9 before -- before today in preparing for the 10 deposition? 11 A. Yes, I did. 12 Q. Can you tell me what documents you 13 reviewed? 14 A. I read through a handful of board memos 15 that were presented back in history and also some 16 other documents that had been submitted as part of 17 due diligence for this -- this hearing. 18 Q. Were these documents that you selected or 19 that someone selected for you? 20 A. As part of the preparation, I met with 21 Mr. Scheff yesterday. He had some documents he 22 prepared. 23 Q. Okay. Well, I'm not -- I'm not asking you 24 anything about -- about anything that was 25 communicated between you and your lawyer. I'm just</p>
<p style="text-align: right;">Page 14</p> <p>1 Q. Okay. And did you have representation 2 there? 3 A. I did. 4 Q. And who represented you? 5 A. Rich Scheff, and David Herman was there 6 with me, and then Sarah Cutrona, my personal 7 attorney as well. 8 Q. Okay. And did you or your attorney receive 9 a copy of the transcript of the CFPB deposition? 10 A. Yes. 11 Q. Okay. And you still have that, you or your 12 attorneys still have that? 13 A. Yes, we do. 14 MR. ACKELSBURG: Okay. Obviously, we 15 would like a copy. 16 MR. SCHEFF: I don't know that I'm 17 permitted -- first of all, we didn't -- we weren't 18 provided one by the CFPB. And I don't know -- we 19 have to check the regulations as to whether or not 20 we're permitted to disclose it. If we are, 21 obviously, we'll share it with you. And if not, 22 there may be a procedure to get permission to do 23 that. I just don't know, but I'm happy to look into 24 that. 25 MR. ACKELSBURG: Okay. And we can</p>	<p style="text-align: right;">Page 16</p> <p>1 really specifically focused on the documents. So 2 the documents were just documents that were reviewed 3 during the course of that meeting? 4 A. Yes. 5 Q. Okay. Did you -- did you discuss your 6 deposition today with anyone other than counsel? 7 A. No, I did not. 8 Q. Now, because you've been deposed before, 9 I assume you know the ropes, like, what we're doing 10 here, but just for clarity in the record, I do want 11 to just confirm with you your understanding of 12 what's happening here today. 13 You understand that this -- that we're 14 proceeding with questions and answers, both my 15 question, your answers and any objections or 16 comments of counsel will be transcribed into a 17 transcript like the one that you apparently -- 18 apparently was done after the CFPB deposition. Do 19 you understand that? 20 A. I do. 21 Q. Okay. And that transcript could be used by 22 a party in this case -- 23 A. Okay. 24 Q. -- in further proceedings? You understand 25 that. Okay. And you also understand that you're</p>

<p style="text-align: right;">Page 17</p> <p>1 under oath today just as if you were testifying in 2 federal court? 3 A. I do. 4 Q. Okay. Now, we're also -- I don't know if 5 the -- if in the previous depositions you had a 6 videotape going, but we do have a videotape, as 7 you're aware. And I just want to make it clear to 8 you that the official transcript will be what the 9 court reporter -- the official record will be the 10 transcript that the court reporter will prepare. 11 So, therefore, nonverbals aren't picked up on the 12 transcript. You have to -- you know, a nod of the 13 head isn't going to work. It will have to be "yes." 14 Or a shaken head doesn't work. We need a -- we need 15 an affirmative "no." 16 So the other thing I want to make clear to 17 you is that if you don't understand the question, 18 just make -- just say that, and I'll try to rephrase 19 it. 20 A. Okay. 21 Q. Your lawyer may object to a question. I'm 22 sure he will. Other lawyers may have something to 23 say also. But it's important for you to understand 24 that even -- even if there is an objection, unless 25 your lawyer directs you not to answer that question,</p>	<p style="text-align: right;">Page 19</p> <p>1 A. Currently, I'm the chief operating officer 2 of Elevate Credit. 3 Q. Of Elevate Credit. Okay. And Elevate 4 was formed -- when did Elevate first start 5 operations? 6 A. Elevate began operations in May of 2014. 7 Q. And what position did -- and you went to 8 Elevate in the beginning, correct? 9 A. That's correct. 10 Q. And you held what position? 11 A. I was chief operating officer there as 12 well. 13 Q. Okay. And at the time, just prior to 14 moving to Elevate, you had a position at Think 15 Finance, correct? 16 A. That's correct. 17 Q. And what was the position there? 18 A. I was -- I went through a handful of 19 positions. I believe my last position there was 20 chief -- chief product officer. It was right around 21 that same time that I was promoted to chief 22 operating officer. So it's one of those two -- two 23 roles there. 24 Q. Okay. And as chief product officer, what 25 were your responsibilities at Think Finance?</p>
<p style="text-align: right;">Page 18</p> <p>1 you still have to answer it. Okay? 2 A. Understand. 3 Q. So the way it will -- in that case, you 4 know, I'll ask the question, there will be an 5 objection, we'll wait until the objection is over, 6 and then you -- and then you respond with your 7 answer. Okay? Is that understood? 8 A. Understood. 9 Q. Great. We will take breaks. This isn't an 10 endurance course. If you need a break, let us know. 11 We'll just ask you to finish the -- your answer to 12 the pending question, and then we'll go off the 13 record. We will take periodic breaks. So, again, 14 let us know if you need a break. But I assure you 15 that this -- we're not going to be just going all 16 through until lunch. There will be at least one 17 break before lunch. 18 And, finally, is there any reason, such as 19 illness, hearing disorder, medication, lack of 20 sleep, why you can't give this deposition your full 21 attention this morning? 22 A. No, there's not. 23 Q. Okay. Great. So let's start with your 24 position that you currently have, your employment 25 position.</p>	<p style="text-align: right;">Page 20</p> <p>1 A. Sure. So I had three different groups that 2 reported to me, one being our operations team that 3 managed the customer service and call centers for 4 the products within Elevate, and then also the 5 product -- 6 Q. With Elevate or Think Finance? 7 A. I'm sorry, with Think Finance. It's been a 8 while. 9 And then also I had two different product 10 teams reporting to me. One was around installment 11 lending products, and some were around the single 12 pay or direct lending products. 13 Q. So the -- the two -- so there also was a 14 line of credit product, right? 15 A. Right, there was a line of credit product 16 that was -- that there was the third piece of that, 17 too, as well. I'm sorry. 18 Q. So you had the operations team working on 19 call centers and collections, right? 20 A. I didn't have the collections at that time. 21 Q. Okay. I thought -- I thought you 22 said collect- -- I'm sorry. 23 A. I'm sorry, it was customer service. The 24 operations was specific to the customer service 25 piece. The collections piece was within our risk</p>

<p style="text-align: right;">Page 21</p> <p>1 organization.</p> <p>2 Q. The risk organization. And that's a</p> <p>3 whole --</p> <p>4 A. That's correct.</p> <p>5 Q. -- separate team? Okay.</p> <p>6 MR. SCHEFF: Let him finish his</p> <p>7 question before you answer.</p> <p>8 BY MR. ACKELSBURG:</p> <p>9 Q. So at the time that you -- just prior to</p> <p>10 leaving for Elevate, you -- you had the operations</p> <p>11 team, which mainly was customer service and call</p> <p>12 centers, right?</p> <p>13 A. That's correct.</p> <p>14 Q. And then you had a -- you also -- you</p> <p>15 managed a team for the installment loan products,</p> <p>16 right?</p> <p>17 A. That's correct.</p> <p>18 Q. That would have been Plain Green and Great</p> <p>19 Plains Lending; am I right?</p> <p>20 A. That's correct.</p> <p>21 Q. And you managed the team for the line of</p> <p>22 credit product. That would have been Mobiloans?</p> <p>23 A. That's correct.</p> <p>24 Q. And then you also managed a team for the --</p> <p>25 for the single pay direct lending product, right?</p>	<p style="text-align: right;">Page 23</p> <p>1 as well. Worked with the IT -- IT team on product</p> <p>2 design and product features. So a little bit of</p> <p>3 everything at that -- that stage.</p> <p>4 Q. And what was your background? I mean,</p> <p>5 where did -- where did you work before you came to</p> <p>6 Think Finance?</p> <p>7 A. Sure. Prior to -- prior to when I was with</p> <p>8 Payday One, I was with Guaranty Bank doing</p> <p>9 commercial lending. So finance, office buildings,</p> <p>10 commercial real estate, apartments, things like</p> <p>11 that.</p> <p>12 Q. And was that your first job, Guaranty Bank?</p> <p>13 A. That was.</p> <p>14 Q. So you started there right out of college?</p> <p>15 A. That's correct.</p> <p>16 Q. Where did you go to school?</p> <p>17 A. Texas A&M.</p> <p>18 Q. And so how did you end up at Payday One?</p> <p>19 Or if I -- if I use the term "Think Finance,"</p> <p>20 that's -- you understand that includes the earlier</p> <p>21 names?</p> <p>22 A. Sure.</p> <p>23 Q. Okay. So we'll just say "Think Finance."</p> <p>24 So when you started at Think Finance in</p> <p>25 2003, I mean, how did that happen?</p>
<p style="text-align: right;">Page 22</p> <p>1 A. That's correct.</p> <p>2 Q. And that would have been RISE?</p> <p>3 A. That's correct.</p> <p>4 Q. Okay. When did you -- when did you start</p> <p>5 at Think Finance?</p> <p>6 A. So I started at a predecessor of Think</p> <p>7 Finance. The name changed a couple times through</p> <p>8 the years. But with a company called Payday One</p> <p>9 back in 2003.</p> <p>10 Q. And when you were hired in 2003, what --</p> <p>11 what was your position?</p> <p>12 A. I believe I came in as either a VP of</p> <p>13 operations or an SVP of operations.</p> <p>14 Q. When you say "SVP," senior vice president?</p> <p>15 A. That's correct.</p> <p>16 Q. So either a senior or -- but sort of a vice</p> <p>17 president of operations?</p> <p>18 A. That's correct.</p> <p>19 Q. And when you started, what were your</p> <p>20 responsibilities in 2003?</p> <p>21 A. Yeah, at that point in 2003, there was</p> <p>22 probably only 15 people within the organization. So</p> <p>23 while I was working with the -- the customer service</p> <p>24 operations piece, we did a little bit of everything.</p> <p>25 So I worked with our finance team with forecasting</p>	<p style="text-align: right;">Page 24</p> <p>1 A. Sure. The founder of Think Finance was a</p> <p>2 gentleman named Mike Stinson. He was a friend of</p> <p>3 the family's. And my family had made an investment</p> <p>4 into Payday One back in 2002. And through</p> <p>5 conversations with Mike, he asked me to come over</p> <p>6 and help him start to build up Payday One and take</p> <p>7 it from a start-up to -- to grow to see where we</p> <p>8 could go from there.</p> <p>9 Q. And had Ken Rees not started yet at -- when</p> <p>10 you -- did you arrive at the company before Ken</p> <p>11 Rees?</p> <p>12 A. I was there before Ken -- Ken, yes.</p> <p>13 Q. And so you mentioned the family. So</p> <p>14 your -- your family was one of the original owner</p> <p>15 investors in the company, in Payday One, at the</p> <p>16 time?</p> <p>17 A. So it was an entity that's owned by my</p> <p>18 grandfather and his children. I'm not part of that.</p> <p>19 But it was -- it was that group that invested in</p> <p>20 Payday One back then.</p> <p>21 Q. Okay. I am going to show you an exhibit.</p> <p>22 MR. ACKELSBURG: We'll mark this as</p> <p>23 Plaintiff's Exhibit 99.</p> <p>24 (Exhibit No. 99 marked.)</p> <p>25 MR. SCHEFF: Irv, was this attached to</p>

<p style="text-align: right;">Page 25</p> <p>1 something? Because if it's been produced in native, 2 that means it was attached to something. 3 MR. ACKELSBURG: Yes. 4 MR. SCHEFF: Do we have the 5 attachment? 6 MR. ACKELSBURG: No, no, that's all it 7 is. 8 MR. SCHEFF: That's all it is? 9 There's no other attachment to this? 10 MR. ACKELSBURG: I don't -- I don't 11 think so. I think that's all that it is. You mean 12 was there -- was there an e-mail? 13 MR. SCHEFF: Typically, as I 14 understand -- 15 MR. ACKELSBURG: I can't -- I really 16 can't tell you, Richard. 17 MR. SCHEFF: All right. As we've 18 discussed before, and I'll put it on the record now 19 again, my concern about showing attachments to 20 e-mails to witnesses without the e-mail is that it's 21 out of context. 22 MR. ACKELSBURG: I don't know that 23 there is an e-mail. 24 MR. SCHEFF: Just let me finish, and 25 then you can respond.</p>	<p style="text-align: right;">Page 27</p> <p>1 this. Do you understand that? 2 A. I understand. 3 Q. Okay. So if you look at -- if you look at 4 this, you'll see that it's a list of ownership. Do 5 you see that? 6 A. I do. 7 Q. And there's a reference to 7HBF. Do you 8 see that? 9 A. I do. 10 Q. And is that the family entity that you 11 referred to? 12 A. That is. 13 Q. Okay. What does 7HBF stand for? Do you 14 know? 15 A. It's stands for seven because there were 16 seven kids. Harvison. And then BF stands for -- 17 it's -- it stands for "bad funds." 18 Q. What does that mean? 19 A. It -- you'd have to ask my granddad on it. 20 I'm not really sure. 21 Q. Okay. And so at that point in time, 22 apparently April of 2012, your family owned, 23 roughly, 16 percent of the company. Does that -- 24 does that sound about right? 25 A. That's what it says, yes.</p>
<p style="text-align: right;">Page 26</p> <p>1 And, obviously, what's important is that 2 we all get truthful testimony that's -- that's put 3 in context. And so I'll ask again, going forward, 4 that if you're going to mark an attachment, and 5 typically that's what it would be if this was the 6 case, then mark the e-mail as well so that the 7 witness can get the full benefit of the entire 8 document. 9 MR. ACKELSBURG: Okay. Thank you. 10 BY MR. ACKELSBURG: 11 Q. So, Mr. Harvison, if you'd take a look at 12 the -- at the document -- so just you know what -- 13 well, we'll be showing you a number of documents 14 here today. So you'll see on the -- on the top of 15 the first page of the document in the lower left -- 16 the lower right-hand corner, you'll see it says 17 TF-PA and there's a number. We call that a Bates 18 number. And what this means is this was part of 19 the -- this was among the documents that Think 20 Finance, that's what the TF stands for, produced 21 for -- to us in the course of the discovery. And 22 some of these documents were actually spreadsheets 23 or some other form of native document that -- and 24 what -- the first page is just for the benefit of 25 counsel to show them where in the production I got</p>	<p style="text-align: right;">Page 28</p> <p>1 Q. Is that -- well, you had some sense of how 2 much -- how big a share your family had, didn't you, 3 when you were there? 4 A. That sounds about right. 5 Q. Okay. And . . . 6 MR. ACKELSBURG: All right. Let's 7 take a look at another exhibit. 8 (Exhibit No. 100 marked.) 9 MR. SCHEFF: Just for the record, that 10 document -- this document you marked as Exhibit 99 11 was attached to an e-mail. 12 MR. ACKELSBURG: You can read the 13 e-mail if you would like. 14 MR. SCHEFF: From Jeffery Yost to 15 somebody named Kirsten. So, again, you know, when 16 you prepare exhibits to mark and use at depositions, 17 please mark the complete document. 18 BY MR. ACKELSBURG: 19 Q. I am going to show you another exhibit. 20 Now, here on this document, you'll notice there's a 21 different number in the lower right-hand side. Do 22 you see that? 23 A. I do. 24 Q. And that says "GPLP," and then it has a 25 number. Do you see that?</p>

<p style="text-align: right;">Page 29</p> <p>1 A. I do.</p> <p>2 Q. Now, what that means, it was in the</p> <p>3 production that we got from Victory Park. Okay?</p> <p>4 A. Okay.</p> <p>5 Q. It's just so you understand how that works.</p> <p>6 So if you -- if you look at this document,</p> <p>7 it's -- it's just a piece of a presentation titled</p> <p>8 "Management Team and Board" and --</p> <p>9 A. Is there a way to see the whole</p> <p>10 presentation?</p> <p>11 Q. I didn't copy the whole presentation.</p> <p>12 MR. SCHEFF: Again, we're -- going</p> <p>13 forward, we're not going to permit this. You have</p> <p>14 to mark the complete document so the witness can see</p> <p>15 the page that you're referencing in the context of</p> <p>16 the entire document. This is not fair to the</p> <p>17 witness. And you need to do that. And we're not</p> <p>18 going to permit you to mark partial documents. It's</p> <p>19 just not fair. So please do that.</p> <p>20 MR. ACKELSBURG: You have the exhibits</p> <p>21 right there.</p> <p>22 MR. SCHEFF: Yeah, but the witness --</p> <p>23 MR. ACKELSBURG: You can -- can you --</p> <p>24 MR. SCHEFF: Irv, please.</p> <p>25 MR. ACKELSBURG: Can you show the</p>	<p style="text-align: right;">Page 31</p> <p>1 appreciate the promotion. But I'm telling you,</p> <p>2 Mr. Ackelsberg, I will do my best here to try and</p> <p>3 present the complete context. But, again, you</p> <p>4 should present full exhibits and not rely on us to</p> <p>5 do so.</p> <p>6 MR. ACKELSBURG: Fine. Thank you.</p> <p>7 BY MR. ACKELSBURG:</p> <p>8 Q. Mr. Harvison, looking -- looking at the one</p> <p>9 page that I did copy, is that an accurate list of</p> <p>10 the management team and board of the company in</p> <p>11 January of 2013? Was Ken Rees the president and CEO</p> <p>12 and chairman of the board?</p> <p>13 A. Yes, he was.</p> <p>14 Q. All right. And the other -- the people</p> <p>15 that are listed as key executives, was Chris Lutes</p> <p>16 the CFO?</p> <p>17 A. He was.</p> <p>18 Q. And was Bill Kontgis the chief information</p> <p>19 officer?</p> <p>20 A. Yes.</p> <p>21 Q. And was Walt Ramsey the chief risk officer?</p> <p>22 A. Yes.</p> <p>23 Q. Was Kevin Dahlstrom the chief marketing</p> <p>24 officer?</p> <p>25 A. He was.</p>
<p style="text-align: right;">Page 30</p> <p>1 witness -- if you want him to see the whole damn</p> <p>2 thing, you can put it on the screen. It's right</p> <p>3 there next to you.</p> <p>4 MR. SCHEFF: Mr. Ackelsberg, it is</p> <p>5 your responsibility to treat the witness fairly and</p> <p>6 present complete documents to the witness, not one</p> <p>7 page. And so that's just not fair. And so if we</p> <p>8 can pull it up, you know, we're happy to show it to</p> <p>9 him, but it's your responsibility to do that and</p> <p>10 mark it, and then -- and mark so the witness, as the</p> <p>11 witness is answering your questions, can see the</p> <p>12 full context of the page that you're showing him.</p> <p>13 So, Mr. Herman, if you can do that, I</p> <p>14 would appreciate you pulling it up. If you can't,</p> <p>15 you can't.</p> <p>16 But it's just not fair. You've got to --</p> <p>17 you've got to show the witness the complete</p> <p>18 document.</p> <p>19 MR. HERMAN: Mr. Ackelsberg, I will</p> <p>20 remind you, I am here representing Mr. Rees. I am</p> <p>21 not Mr. Harvison's attorney. I can do my best here</p> <p>22 to try and pull things up.</p> <p>23 MR. ACKELSBURG: You're partners. I</p> <p>24 mean, come on.</p> <p>25 MR. HERMAN: I'm not a partner. I</p>	<p style="text-align: right;">Page 32</p> <p>1 Q. And the rest of the people listed, were</p> <p>2 they, in fact, the key executives at Think Finance</p> <p>3 in this time period, January 2013?</p> <p>4 MR. SCHEFF: Object to the form.</p> <p>5 You can answer the question.</p> <p>6 A. Yes, they were.</p> <p>7 BY MR. ACKELSBURG:</p> <p>8 Q. Okay. And that lists the board of</p> <p>9 directors. Do you see that?</p> <p>10 A. I do.</p> <p>11 Q. And I notice that you are listed as a board</p> <p>12 member. You were a board member?</p> <p>13 A. That's correct.</p> <p>14 Q. Okay. And the other individuals listed on</p> <p>15 the exhibit, were they serving with you as -- on the</p> <p>16 board of directors of Think Finance at this period</p> <p>17 of time?</p> <p>18 A. Yes, they were.</p> <p>19 Q. When did you join the board of Think</p> <p>20 Finance?</p> <p>21 A. I believe that would be -- it would be in</p> <p>22 the mid to late 2000s.</p> <p>23 Q. And during your tenure on the board, were</p> <p>24 you the sole executive that was a member of the</p> <p>25 board?</p>

<p style="text-align: right;">Page 33</p> <p>1 A. Ken Rees was on the board as well.</p> <p>2 Q. Okay. Now, when you were appointed to the</p> <p>3 board, were you appointed as a representative of</p> <p>4 your family?</p> <p>5 A. Based on the -- I believe the way the</p> <p>6 bylaws are written, based on the size investment my</p> <p>7 family had, they had the right to appoint one board</p> <p>8 member, and I was their representative on the board.</p> <p>9 Q. Okay. Now, when you first arrived at -- at</p> <p>10 the company, which was then called Payday One, and</p> <p>11 you said it only had 15 employees, the product</p> <p>12 was -- was what?</p> <p>13 A. When I joined, the product was -- it was</p> <p>14 called Payday One. It was a -- a single pay product</p> <p>15 offered in probably -- I think when I first joined,</p> <p>16 it was only offered in about five to ten states, and</p> <p>17 then it grew over the years.</p> <p>18 Q. And you said that there were 15 employees.</p> <p>19 How many employees were there prior to the move to</p> <p>20 Elevate?</p> <p>21 MR. GATEWOOD: Objection; form.</p> <p>22 A. I believe when the move to Elevate took</p> <p>23 place in 2014, there was probably close to 500</p> <p>24 employees. I don't know the exact number, but I'm</p> <p>25 guessing around 500 employees.</p>	<p style="text-align: right;">Page 35</p> <p>1 Q. Okay. So looking at Exhibit 101, this loan</p> <p>2 broker registration application that was in the</p> <p>3 records of the Commonwealth, do you recall the</p> <p>4 company submitting a loan broker application to the</p> <p>5 Commonwealth of Pennsylvania?</p> <p>6 A. I knew we submitted one, yes.</p> <p>7 Q. Okay. And if you'll look on page 2,</p> <p>8 that's -- that's you identified as the contact for</p> <p>9 the company?</p> <p>10 A. That's correct.</p> <p>11 Q. Okay. The address listed for the company,</p> <p>12 4150 International Plaza, am I right, that that's</p> <p>13 where -- that's the current address of Elevate as</p> <p>14 well?</p> <p>15 A. Well, Elevate is at 4150 International</p> <p>16 Plaza, Suite 300, but. . .</p> <p>17 Q. But the same building.</p> <p>18 A. Yeah.</p> <p>19 Q. Okay. Thank you.</p> <p>20 And on -- if you turn the page to item --</p> <p>21 Item 5 on the application, you see it's -- in the</p> <p>22 lower right-hand corner, it has page 210?</p> <p>23 A. I do.</p> <p>24 Q. Okay. And I was wondering if you could</p> <p>25 explain Item 5, where it asks for the name and</p>
<p style="text-align: right;">Page 34</p> <p>1 BY MR. ACKELSBERG:</p> <p>2 Q. Okay. Now, at some point, Payday One began</p> <p>3 offering a longer term loan product called</p> <p>4 ThinkCash, correct?</p> <p>5 A. That's correct.</p> <p>6 Q. And does -- do you remember approximately</p> <p>7 when?</p> <p>8 A. Well, actually, I probably would want to</p> <p>9 restate that. The -- the ThinkCash product was</p> <p>10 launched, I'm going to guess, in the 2006, 2007 time</p> <p>11 frame, roughly. But that wasn't a product offered</p> <p>12 by Think Finance or ThinkCash at that time or Payday</p> <p>13 One, our brand name. It was actually through a</p> <p>14 partnership with First Bank of Delaware where they</p> <p>15 were the originator of that, and we were a service</p> <p>16 provider to them.</p> <p>17 Q. Okay.</p> <p>18 MR. ACKELSBERG: So the next exhibit.</p> <p>19 (Exhibit No. 101 marked.)</p> <p>20 BY MR. ACKELSBERG:</p> <p>21 Q. Just so you understand, the -- do you see</p> <p>22 this has the Bates number PAOAG? This is a document</p> <p>23 that was produced by the State of Pennsylvania.</p> <p>24 Okay. You've got that?</p> <p>25 A. Yes.</p>	<p style="text-align: right;">Page 36</p> <p>1 address of the agents or employees of the loan</p> <p>2 broker and the application says, "None. See</p> <p>3 attached" -- "See Attachment 2, automated decision</p> <p>4 engine." Do you see that?</p> <p>5 A. I do. I'm just reviewing it real quick.</p> <p>6 Q. Okay.</p> <p>7 A. (Reviews document.)</p> <p>8 I'm sorry, can you repeat the question</p> <p>9 now?</p> <p>10 Q. Oh, I was just -- you see where I'm looking</p> <p>11 at?</p> <p>12 A. I do.</p> <p>13 Q. Okay. So I was wondering if you could</p> <p>14 explain what this means, to mean -- what the -- what</p> <p>15 the intent of the company was with regard to this</p> <p>16 particular -- the answer to this particular question</p> <p>17 on the -- on the application that no employees but</p> <p>18 there's an automated decision engine. What -- what</p> <p>19 is the intent?</p> <p>20 MR. SCHEFF: Object to the form.</p> <p>21 You can answer the question if you can.</p> <p>22 A. So I'm not -- I'm certain -- exactly</p> <p>23 certain, but I can take a guess at what -- what that</p> <p>24 was meant for. I think in a typical mortgage broker</p> <p>25 relationship, there's an actual mortgage lender</p>

<p style="text-align: right;">Page 37</p> <p>1 person who's referring the loan over. And if you 2 read back in -- in Attachment 2, what we were 3 talking about is being a marketer to provide leads 4 to a website, not an individual. And the website 5 was licensed by the bank, and the bank would do the 6 underwriting on that. And so since there was not a 7 specific individual, I assume they went with an 8 automated decision, an automated process because 9 there's no specific person referring the leads over. 10 BY MR. ACKELSBURG: 11 Q. What is that -- that's a term you're 12 familiar with, an automated decision engine, right? 13 A. It is. 14 Q. Okay. And what does that mean? 15 A. To me, what an automated decision is, is 16 there's -- and just in general terms, there's preset 17 variables that go into making some -- some -- 18 MR. SCHEFF: Go ahead and finish the 19 question, and then I'll make a comment. 20 A. -- to making some sort of decision. It 21 could -- and it could be anything from lending rules 22 to triggers for marketing initiatives. But it's 23 just taking a set of rules, automating that there's 24 no human involved in that process, and then coming 25 up with a decision and -- and the outcome that comes</p>	<p style="text-align: right;">Page 39</p> <p>1 BY MR. ACKELSBURG: 2 Q. So when -- when you were referring to a 3 decision in describing an automated decision engine, 4 am I right that we're talking about a decision 5 whether to approve a loan or deny a loan 6 application? Is that what we're talking about? 7 MR. GATEWOOD: Objection; form. 8 A. So as I said, actually, a decision engine 9 could be used for multiple purposes. One purpose 10 could be for an approval on a loan. It also could 11 be for different account management functions. It 12 could be for variables that come in on customer 13 interactions, if you want to send out customer 14 communications. So it can be -- it can be leveraged 15 in multiple different ways. 16 BY MR. ACKELSBURG: 17 Q. But that's in -- I see. You're saying what 18 an automated decision engine could be in other 19 context. But I'm talking about the context here, 20 meant that the role of broker was that -- the role 21 of broker that was being played by Think Finance 22 with regard to the ThinkCash product was its 23 automated decision engine for deciding on whether to 24 approve a loan application. That's what we're 25 talking about, right?</p>
<p style="text-align: right;">Page 38</p> <p>1 out with the variables. 2 BY MR. ACKELSBURG: 3 Q. And when you say "a decision" -- 4 MR. SCHEFF: Before -- before you ask 5 a question, I want to note for the record that 6 Exhibit 101 starts with PAOAG 0000207, and it ends 7 at PAOAG 0000247, but numbers PAOAG 0000219 through 8 243 are missing from this document. So this is an 9 incomplete document, again, that you're asking this 10 witness about. 11 So, again, Mr. Ackelsberg, you must mark 12 complete documents in fairness to the witness. 13 We're -- we can't have depositions where witnesses 14 see pieces of exhibits. It's just not fair. 15 You can ask your next question. 16 MR. HERMAN: For the record, I would 17 also like to note, Mr. Ackelsberg, I'm not sure this 18 is the correct Bates number from the latest 19 Pennsylvania production. This may have been from an 20 earlier production which was superseded by the 21 Commonwealth. The current Bates number page I have 22 for 207 is an article that you have referenced, and 23 this is PAOAG 0001940. 24 MR. ACKELSBURG: 1940. Okay. Thank 25 you.</p>	<p style="text-align: right;">Page 40</p> <p>1 MR. SCHEFF: Object to the form. 2 You can answer the question if you can. 3 A. So my understanding the way this would -- 4 this was prepared, and I -- this goes back quite a 5 while ago, was that we were going to be providing 6 leads over to a site. There wasn't a specific 7 person to be the broker. That's why that was left 8 off. 9 BY MR. ACKELSBURG: 10 Q. And the site was your site, right? 11 MR. SCHEFF: Were you done -- were you 12 done with your answer before Mr. Ackelsberg asked 13 the next question? 14 THE WITNESS: I am done now. 15 MR. SCHEFF: All right. Go ahead. 16 BY MR. ACKELSBURG: 17 Q. And the site was the ThinkCash site, 18 correct? 19 A. Well, the site was licensed to First Bank 20 of Delaware. So they had a license agreement to -- 21 to take ownership of that site. 22 Q. Of the ThinkCash decision engine, correct? 23 MR. SCHEFF: Object to the form. 24 You can answer the question if you can. 25 A. So the decision engine was created by Think</p>

<p style="text-align: right;">Page 41</p> <p>1 Finance, but any variable that went in to make a</p> <p>2 decision based on the criteria that the applicant</p> <p>3 inputted was set by the bank, approved by the bank</p> <p>4 and any modification of that was -- was at the</p> <p>5 bank's discretion.</p> <p>6 BY MR. ACKELSBURG:</p> <p>7 Q. Okay. And you can see there's an</p> <p>8 Attachment 2 that's entitled "ThinkCash Program</p> <p>9 Review." That's at the end of the exhibit. You see</p> <p>10 that, right?</p> <p>11 A. I do.</p> <p>12 Q. And this is a document that was drafted</p> <p>13 by -- by Think -- by Payday One or ThinkCash, right?</p> <p>14 MR. SCHEFF: Object to the form.</p> <p>15 You can answer the question if you can.</p> <p>16 A. I believe it was.</p> <p>17 BY MR. ACKELSBURG:</p> <p>18 Q. Okay. And which department would have</p> <p>19 drafted this document?</p> <p>20 MR. SCHEFF: Object to the form.</p> <p>21 A. I would assume that the -- our legal</p> <p>22 department would have drafted this.</p> <p>23 BY MR. ACKELSBURG:</p> <p>24 Q. Okay. But it's a document that -- it looks</p> <p>25 familiar to you? You remember seeing it, right?</p>	<p style="text-align: right;">Page 43</p> <p>1 partnership that you ever had with regard to this</p> <p>2 particular installment loan product was First Bank</p> <p>3 of Delaware?</p> <p>4 A. In regards to the ThinkCash product, the</p> <p>5 First Bank of Delaware was the only bank partner we</p> <p>6 had. We had bank partnerships prior to that and</p> <p>7 bank partnerships post that. But specifically for</p> <p>8 ThinkCash, that's correct.</p> <p>9 Q. Okay. And if you look at the graphic, the</p> <p>10 last page, is this an accurate representation of the</p> <p>11 different roles played by ThinkCash and First Bank</p> <p>12 of Delaware when that product was in operation?</p> <p>13 MR. SCHEFF: Object to the form.</p> <p>14 A. So I would say this was an outline of how</p> <p>15 we first approached the bank to talk about</p> <p>16 structuring the program. It evolved over time. So</p> <p>17 I think as -- as the program matured and evolved,</p> <p>18 not only did the bank have control over the</p> <p>19 underwriting criteria and the verifications about</p> <p>20 the ACH processing, but they also took on the</p> <p>21 customer support and collections of product over</p> <p>22 time.</p> <p>23 BY MR. ACKELSBURG:</p> <p>24 Q. Okay. Now, you mentioned that the -- that</p> <p>25 this relates to the earlier time when you approached</p>
<p style="text-align: right;">Page 42</p> <p>1 A. It's -- it's been a long time. I can't</p> <p>2 remember specifically, but. . .</p> <p>3 Q. But it looks familiar?</p> <p>4 A. It looks familiar.</p> <p>5 Q. Thank you.</p> <p>6 In the second paragraph, it states, "TC</p> <p>7 Loan Service, doing business as ThinkCash, the</p> <p>8 marketing and service entity of PayDay One, will</p> <p>9 provide all marketing and servicing for the program,</p> <p>10 and the lender will be one or more state banks." Do</p> <p>11 you see that?</p> <p>12 A. I do.</p> <p>13 Q. "Currently, we're working with the First</p> <p>14 Bank of Delaware."</p> <p>15 Now, my question is, was there a time when</p> <p>16 the company imagined more than one bank partnering</p> <p>17 with the company for this -- for this type of</p> <p>18 product?</p> <p>19 MR. SCHEFF: Object to the form.</p> <p>20 A. Yes, our intent was that we could create</p> <p>21 products with multiple bank partners behind it to</p> <p>22 help support any banks that wanted to get in the</p> <p>23 lending space.</p> <p>24 BY MR. ACKELSBURG:</p> <p>25 Q. But am I right, that the only bank</p>	<p style="text-align: right;">Page 44</p> <p>1 the bank about the product. Were you part of the</p> <p>2 team that approached the bank?</p> <p>3 A. I made the first introduction to the CEO of</p> <p>4 the bank, and then negotiations from there were</p> <p>5 handled with our CEO and our legal team.</p> <p>6 Q. Being Ken Rees?</p> <p>7 A. Yes.</p> <p>8 Q. Okay. So you made the first contact. But</p> <p>9 that was with who at First Bank of Delaware?</p> <p>10 A. Alonzo Primus.</p> <p>11 Q. And did you have a preexisting relationship</p> <p>12 with Mr. Primus?</p> <p>13 A. We did not.</p> <p>14 Q. Were you aware that Mr. Primus, that the</p> <p>15 bank had partnerships with other payday lenders at</p> <p>16 the time?</p> <p>17 MR. SCHEFF: Object to the form.</p> <p>18 You can answer.</p> <p>19 A. We were aware that First Bank of Delaware</p> <p>20 had other service provider relationships, which is</p> <p>21 why we were -- we were looking for banks to partner</p> <p>22 with in a similar fashion. So he was somebody we</p> <p>23 wanted to speak with.</p> <p>24 BY MR. ACKELSBURG:</p> <p>25 Q. And do you remember who some of the other</p>

<p style="text-align: right;">Page 65</p> <p>1 you were a party to. Do you see that?</p> <p>2 A. I do.</p> <p>3 Q. Okay. And so -- now, the other people, do</p> <p>4 you recall these people, like, John Gallagher at</p> <p>5 First Bank of Delaware? Do you remember him?</p> <p>6 A. I do.</p> <p>7 Q. Was he one of the people you were</p> <p>8 interacting with with regard to the operation of the</p> <p>9 product?</p> <p>10 A. He was.</p> <p>11 Q. Okay. And it looks like the topic that was</p> <p>12 being discussed with the bank was what happens to</p> <p>13 leads that don't result in funded applications with</p> <p>14 the bank, right?</p> <p>15 A. Yes.</p> <p>16 Q. And do you recall how -- how this issue was</p> <p>17 resolved? Did, in fact, Think retain the right to</p> <p>18 market the leads that did not result in completed</p> <p>19 ThinkCash loans?</p> <p>20 MR. GATEWOOD: Objection; form.</p> <p>21 A. I'd have to go back and look at some</p> <p>22 documents. I don't remember how that was resolved.</p> <p>23 MR. ACKELSBURG: Okay. Look at 108.</p> <p>24 (Exhibit No. 108 marked.)</p> <p>25 MR. SCHEFF: Again, I'm going to note</p>	<p style="text-align: right;">Page 67</p> <p>1 A. So, yes, this looks like the type of</p> <p>2 advertisement approved by the bank that Think would</p> <p>3 send out to -- to attract customers.</p> <p>4 BY MR. ACKELSBURG:</p> <p>5 Q. And was that -- and it references that</p> <p>6 consumers can apply for the product at the website</p> <p>7 thinkcash.com, you recall that, correct?</p> <p>8 A. I do.</p> <p>9 MR. ACKELSBURG: All right. Why don't</p> <p>10 we -- this would be a good place to stop.</p> <p>11 MR. SCHEFF: Sure. That's fine.</p> <p>12 THE VIDEOGRAPHER: We are off the</p> <p>13 record. The time 10:12 a m.</p> <p>14 (Break taken, 10:12 a m. to 10:32 a m.)</p> <p>15 THE VIDEOGRAPHER: We are back on the</p> <p>16 record. The time is 10:32 a m.</p> <p>17 BY MR. ACKELSBURG:</p> <p>18 Q. Mr. Harvison, do you remember in 2009 the</p> <p>19 company being notified by the Pennsylvania banking</p> <p>20 department that online -- online lending, like being</p> <p>21 done with the Think -- like in the ThinkCash</p> <p>22 product, would no longer be allowed in Pennsylvania?</p> <p>23 Do you remember that happening?</p> <p>24 MR. GATEWOOD: Objection; form.</p> <p>25 MR. SCHEFF: Object to the form.</p>
<p style="text-align: right;">Page 66</p> <p>1 for the record, that the top of this document says,</p> <p>2 "Case 2:14-cv-07139-JCJ, Document 205-1, Filed</p> <p>3 12/21/17, page 5 of 8." So --</p> <p>4 MR. ACKELSBURG: A page from the</p> <p>5 complaint, Richard.</p> <p>6 MR. SCHEFF: You know, again, show him</p> <p>7 the complete document, Mr. Ackelsberg. This will be</p> <p>8 the last deposition where this occurs.</p> <p>9 MR. ACKELSBURG: You have given this</p> <p>10 speech how many times.</p> <p>11 MR. SCHEFF: Then just represent to me</p> <p>12 that this will be corrected so I can tell my client</p> <p>13 for tomorrow that, in fact, she will be deposed. If</p> <p>14 not, she will not be. Okay?</p> <p>15 BY MR. ACKELSBURG:</p> <p>16 Q. So I'm showing you just a page from the</p> <p>17 complaint, an exhibit that was attached to the</p> <p>18 complaint in this matter and showing an e-mail. And</p> <p>19 I'm just asking you, just based on your recollection</p> <p>20 of the product, does this look like the kind of</p> <p>21 communication that Think would have sent to</p> <p>22 consumers that were involved in the -- well, that</p> <p>23 were being marketed for the product?</p> <p>24 MR. SCHEFF: Object to the form.</p> <p>25 MR. GATEWOOD: Objection; form.</p>	<p style="text-align: right;">Page 68</p> <p>1 You can answer the question.</p> <p>2 A. No, I don't remember that.</p> <p>3 MR. ACKELSBURG: Okay. I'm going to</p> <p>4 skip -- skip a few documents in the numbering and go</p> <p>5 to No. 112.</p> <p>6 MR. GATEWOOD: Irv, you're skipping a</p> <p>7 few numbers?</p> <p>8 MR. ACKELSBURG: Yes. Actually, I am</p> <p>9 going to -- let me identify 111, too. I am going to</p> <p>10 show you both of them.</p> <p>11 (Exhibit Nos. 111 and 112 marked.)</p> <p>12 BY MR. ACKELSBURG:</p> <p>13 Q. Now, both Exhibits 111 and 112, pertain to</p> <p>14 a topic I just want to ask you briefly about, and</p> <p>15 that is with regard to Think Finance buying leads</p> <p>16 from CashNetUSA. Do you remember that?</p> <p>17 A. I do remember.</p> <p>18 Q. You do. Yeah, okay. So why don't we start</p> <p>19 with 111. And first, let me -- let me just ask</p> <p>20 you -- we're going to look at several board memos</p> <p>21 over the course of the deposition. And you</p> <p>22 mentioned that -- you confirmed that you were a</p> <p>23 board member at Think Finance during this period of</p> <p>24 time. And as a member of the board, did you receive</p> <p>25 board packages before a meeting?</p>

<p style="text-align: right;">Page 69</p> <p>1 MR. SCHEFF: Object to the form; 2 misstating the testimony. 3 You can answer the question if you can. 4 A. Board members typically receive the board 5 package the day before the meeting. 6 BY MR. ACKELSBURG: 7 Q. And part of that package would be a memo 8 from the CEO, Ken Rees? 9 A. That's correct. 10 Q. And, typically, would that report be 11 discussed at the meeting, the -- the CEO report? 12 MR. SCHEFF: Object to the form. 13 You can answer the question. 14 A. Typically, the memo wasn't discussed at the 15 meeting. It was really the contents of the 16 presentation. 17 BY MR. ACKELSBURG: 18 Q. Okay. But the memo there -- the board 19 members would have the memo prior to the meeting? 20 A. That's correct. 21 Q. And so if you look at 111, I believe I'm 22 showing you one of -- am I right, that this would -- 23 this would be what we're talking about with a CEO 24 memo to the board? This would be one such memo? 25 A. Yes.</p>	<p style="text-align: right;">Page 71</p> <p>1 A. So, yes, there was. 2 Q. Okay. And what do you recall with regard 3 to that line of business? 4 A. What I remember about that structure being 5 is that CashNet would have traffic that they either 6 they -- they couldn't approve based on not meeting 7 their underwriting criteria or they had states that 8 they didn't service. And if it matched up with a 9 partner of ours, like, the ThinkCash program, that 10 we could purchase some of those leads and send it 11 over to the bank for them to review. 12 Q. Okay. And that looking at the next 13 exhibit, 112, where are, in fact, some of those 14 leads then considered for ThinkCash loans? 15 MR. SCHEFF: Object to the form. 16 You can answer the question. 17 A. I'm sorry, can you restate that one more 18 time? 19 BY MR. ACKELSBURG: 20 Q. If you look at -- if you look at 112, it 21 appears to be an Outlook appointment with -- between 22 yourself and people at First Bank of Delaware. 23 Correct? 24 A. Correct. 25 Q. So is it correct, that first -- that the</p>
<p style="text-align: right;">Page 70</p> <p>1 Q. We're looking at TF-PA 724002. And I want 2 you to look at the second page under "ThinkCash," 3 the next to the last paragraph. And why don't you 4 read that out loud? 5 A. Sure. It says, "We are also working on 6 some strategic opportunities to buy traffic from 7 lenders who have exited from certain states. In 8 particular, we're close to a deal with CashNetUSA 9 and one other online lender. I hope to expand these 10 over time." 11 Q. And then if you look at -- well, let's just 12 stay with that -- with that sentence. So what can 13 you tell us -- what do you remember about that line 14 of business, buying leads from CashNetUSA? 15 MR. GATEWOOD: Objection; form. 16 MR. SCHEFF: Object to the form. 17 BY MR. ACKELSBURG: 18 Q. Did it actually happen? There was a period 19 you were, in fact, buying leads? 20 MR. SCHEFF: Object to the form. 21 You can answer. 22 Is that a question? Because it sounded -- 23 BY MR. ACKELSBURG: 24 Q. Was there a period of time that Think did, 25 in fact, buy leads from CashNetUSA?</p>	<p style="text-align: right;">Page 72</p> <p>1 ThinkCash program, in fact, did take applications 2 that were leads from CashNetUSA? 3 MR. GATEWOOD: Objection; form. 4 BY MR. ACKELSBURG: 5 Q. Did that happen? 6 A. Yes, so this -- this meeting was probably, 7 what, four months after the board memo. But at some 8 point, there -- there was time where ThinkCash took 9 volume from other providers. 10 Q. Okay. Thank you. 11 MR. ACKELSBURG: I am going to show 12 you another exhibit, P-113. 13 (Exhibit No. 113 marked.) 14 BY MR. ACKELSBURG: 15 Q. Was there -- looking at Exhibit 113, was 16 there an e-mail list internally called "PDO 17 Corporate"? 18 A. Yes. 19 Q. And were you on that list? 20 A. I was. 21 Q. Okay. So you would have received this 22 e-mail, then, from Sarah Cutrona in July of 2009? 23 A. Yes, I would have. 24 Q. And do you recall the e-mail? 25 A. I don't remember particularly, but,</p>

<p style="text-align: right;">Page 73</p> <p>1 obviously, I received it.</p> <p>2 Q. Do you remember -- do you remember anything</p> <p>3 at all with regard to the topic of -- you don't</p> <p>4 recall the specific e-mail, but do you recall the</p> <p>5 subject discussed in the e-mail?</p> <p>6 A. I do.</p> <p>7 Q. Okay. And what do you remember about it?</p> <p>8 MR. SCHEFF: Again, to the extent you</p> <p>9 can answer this question without disclosing</p> <p>10 communications with counsel for Think Finance,</p> <p>11 please do. And if you can't, then I assume there's</p> <p>12 a direction not to answer, Mr. Gatewood?</p> <p>13 MR. GATEWOOD: Yes, that's right.</p> <p>14 A. So, I mean, I think it's -- my response</p> <p>15 would be pretty much what's contained within this --</p> <p>16 this e-mail, in that there was a regulatory change</p> <p>17 within the state of Pennsylvania. So the direct</p> <p>18 lending product that we had through PayDay One in</p> <p>19 the state was -- was paused, and we stopped</p> <p>20 marketing that product in the state of Pennsylvania.</p> <p>21 BY MR. ACKELSBURG:</p> <p>22 Q. Now, in the second -- at the end of the</p> <p>23 second paragraph of the Cutrona e-mail, it says,</p> <p>24 "Our diversification strategy is indeed paying off."</p> <p>25 Do you see that?</p>	<p style="text-align: right;">Page 75</p> <p>1 MR. ACKELSBURG: Okay.</p> <p>2 (Exhibit No. 114 marked.)</p> <p>3 BY MR. ACKELSBURG:</p> <p>4 Q. All right. We're looking at the Rees</p> <p>5 report to the board members dated September 16,</p> <p>6 2010. Do you see that?</p> <p>7 A. I do.</p> <p>8 Q. All right. And if you'd turn to Mr. Rees's</p> <p>9 discussion of the ThinkCash product on page 2.</p> <p>10 MR. GATEWOOD: Mr. Ackelsberg, is this</p> <p>11 Exhibit 114?</p> <p>12 MR. ACKELSBURG: Yes, it is.</p> <p>13 BY MR. ACKELSBURG:</p> <p>14 Q. Why don't you read the second paragraph in</p> <p>15 the ThinkCash discussion.</p> <p>16 A. It says, "We are going to be consciously</p> <p>17 slowing the growth of ThinkCash between now and the</p> <p>18 end of the year. First Bank of Delaware has become</p> <p>19 concerned that we are growing so fast that the</p> <p>20 regulators may become upset. They want to make sure</p> <p>21 they have a good exam this year, so they are</p> <p>22 hypersensitive to anything that might cause</p> <p>23 problems."</p> <p>24 Q. Do you -- do you -- my first question is,</p> <p>25 do you recall First Bank of Delaware being concerned</p>
<p style="text-align: right;">Page 74</p> <p>1 A. I do.</p> <p>2 Q. And you know what she's referencing, don't</p> <p>3 you?</p> <p>4 MR. SCHEFF: Object to the form.</p> <p>5 You can answer the question if you can.</p> <p>6 And, again, to the extent that you can answer the</p> <p>7 question without disclosing confidential</p> <p>8 communications with counsel, you may. And if not, I</p> <p>9 assume Mr. Gatewood will direct you not to answer</p> <p>10 the question.</p> <p>11 A. I mean, that -- that would be stuff -- a</p> <p>12 conversation we had with Sarah.</p> <p>13 BY MR. ACKELSBURG:</p> <p>14 Q. Well, what -- I'm not asking for your</p> <p>15 conversation with Sarah. I'm asking within --</p> <p>16 within the executives, do you know what this refers</p> <p>17 to, a diversification strategy?</p> <p>18 MR. GATEWOOD: And I instruct the</p> <p>19 witness not to answer that question. He's stated</p> <p>20 that -- you asked him what diversification strategy</p> <p>21 means within the context of Mr. Cutrona's e-mail,</p> <p>22 and he's indicated that that meaning derives from</p> <p>23 his conversation with Ms. Cutrona, and, therefore,</p> <p>24 is confidential attorney-client communication and</p> <p>25 I'm instructing the witness not to answer.</p>	<p style="text-align: right;">Page 76</p> <p>1 that the product -- that the -- that the product was</p> <p>2 growing too fast for its appetite?</p> <p>3 MR. GATEWOOD: Objection; form.</p> <p>4 A. So my recollection was that the -- the</p> <p>5 product was -- was at a nice growth rate and they</p> <p>6 wanted to make sure that they had the proper support</p> <p>7 for a program growing at that rate. So they -- they</p> <p>8 did ask to slow down the program some.</p> <p>9 BY MR. ACKELSBURG:</p> <p>10 Q. There's reference to also in -- under</p> <p>11 "ThinkCash" an upcoming release for ThinkCash 2.0.</p> <p>12 Do you see that at the bottom?</p> <p>13 A. I do.</p> <p>14 Q. What was ThinkCash 2.0?</p> <p>15 A. My recollection on this was a -- what we</p> <p>16 would call a refresh or a reskin of the website, so</p> <p>17 improve the look and feel, the application flow.</p> <p>18 And so through that process, we worked with the bank</p> <p>19 to redesign what the first release of the -- the</p> <p>20 website content looked like to help improve</p> <p>21 comparisons with the -- the second release of it.</p> <p>22 Q. Okay. Now, when -- you mentioned that</p> <p>23 when -- that prior to the board -- the day before</p> <p>24 the board would meet, they would get a package,</p> <p>25 right?</p>

<p style="text-align: right;">Page 77</p> <p>1 A. Correct.</p> <p>2 Q. Okay. And besides the CEO's report, there</p> <p>3 would be a large -- a large dec that was also</p> <p>4 generally produced, right?</p> <p>5 MR. SCHEFF: Object to the form.</p> <p>6 You can answer the question if you can.</p> <p>7 A. Yes.</p> <p>8 BY MR. ACKELSBURG:</p> <p>9 Q. And that -- those decs could be very</p> <p>10 numerous in terms of the pages; am I right?</p> <p>11 MR. SCHEFF: Object to the form.</p> <p>12 A. The presentation is very lengthy, yes.</p> <p>13 BY MR. ACKELSBURG:</p> <p>14 Q. It could be a very -- very lengthy</p> <p>15 presentation. Okay.</p> <p>16 MR. ACKELSBURG: Well, I want to show</p> <p>17 you -- in the production we got a number of these</p> <p>18 presentations, and I want to show you a piece of one</p> <p>19 of those. And what I have done here is I have</p> <p>20 copied the first page of the dec so you know which</p> <p>21 dec it came out of. And I'm calling this</p> <p>22 Exhibit 115.</p> <p>23 (Exhibit No. 115 marked.)</p> <p>24 MR. SCHEFF: How many pages is this</p> <p>25 dec, Mr. Ackelsberg?</p>	<p style="text-align: right;">Page 79</p> <p>1 by then either Ken or the finance department? Is</p> <p>2 that -- is that what you think?</p> <p>3 MR. SCHEFF: Object to the form.</p> <p>4 A. Yes.</p> <p>5 BY MR. ACKELSBURG:</p> <p>6 Q. With regard to -- under "Collections," you</p> <p>7 see it says, "Will sell off old bad debt this year."</p> <p>8 Do you see that?</p> <p>9 A. I do.</p> <p>10 Q. And it says, also, that the company is</p> <p>11 working with a debt monetization expert to optimize</p> <p>12 sales. Do you see that?</p> <p>13 A. I do.</p> <p>14 Q. And that would have been Bret Horrocks of</p> <p>15 SourceOne, correct?</p> <p>16 MR. SCHEFF: Object to the form.</p> <p>17 A. Bret was the consultant that we were</p> <p>18 working with for the debt sale process.</p> <p>19 BY MR. ACKELSBURG:</p> <p>20 Q. And you worked on that project, correct?</p> <p>21 A. I did some, yes.</p> <p>22 Q. And what were -- and what were the terms of</p> <p>23 his engagement? Do you recall?</p> <p>24 A. I'd have to go back to his contract to look</p> <p>25 at what the terms are.</p>
<p style="text-align: right;">Page 78</p> <p>1 MR. ACKELSBURG: It was too big to fit</p> <p>2 in my notebook.</p> <p>3 MR. SCHEFF: Well, the next time it</p> <p>4 won't be. And you're going to have to show the</p> <p>5 entire exhibit.</p> <p>6 BY MR. ACKELSBURG:</p> <p>7 Q. So I'm showing you from the dec pages</p> <p>8 671848 and 671849. And, again, this is -- you'll</p> <p>9 see this is from the October 15th, 2010, meeting.</p> <p>10 Do you see that?</p> <p>11 A. Yes.</p> <p>12 Q. All right. And what -- well, let me ask</p> <p>13 you about these decs. I mean, who would generally</p> <p>14 prepare them for the board?</p> <p>15 MR. SCHEFF: Object to the form.</p> <p>16 A. The board decs were generally prepared by</p> <p>17 the -- the finance department, and then for special</p> <p>18 topics, it would depend on which topic we were going</p> <p>19 into. You know, Ken would have a few slides in</p> <p>20 that, maybe our regulatory team, and sometimes the</p> <p>21 product teams.</p> <p>22 BY MR. ACKELSBURG:</p> <p>23 Q. So in looking at -- in looking at this --</p> <p>24 this subject here, "Operating Margin Improvement</p> <p>25 Initiatives," would this likely have been produced</p>	<p style="text-align: right;">Page 80</p> <p>1 Q. Basically, what was his job? What was</p> <p>2 he -- what was he retained to do?</p> <p>3 A. What I remember the purpose of his</p> <p>4 engagement was twofold. One, was to look at and</p> <p>5 evaluate the potential to sell off bad debt, who the</p> <p>6 vendors are that could purchase that debt either</p> <p>7 from -- from Think at that time or from the bank</p> <p>8 product. And then also to do a review of collection</p> <p>9 practices, either for Think or for our partners, and</p> <p>10 making recommendations on how to improve the</p> <p>11 collection strategies there.</p> <p>12 Q. And, ultimately, it was Bret Horrocks that</p> <p>13 connected you with National Credit Adjusters, right?</p> <p>14 MR. DAUGHERTY: Objection to form.</p> <p>15 A. I believe he did make the introduction.</p> <p>16 BY MR. ACKELSBURG:</p> <p>17 Q. And, in fact, the debt sales were made -- I</p> <p>18 mean, in fact, Think did sell the debt to NCA,</p> <p>19 right?</p> <p>20 MR. SCHEFF: Object to the form.</p> <p>21 BY MR. ACKELSBURG:</p> <p>22 Q. That happened over time, right?</p> <p>23 MR. SCHEFF: Object to the --</p> <p>24 MR. ACKELSBURG: Go ahead.</p> <p>25 MR. SCHEFF: Object to the form.</p>

<p style="text-align: right;">Page 81</p> <p>1 A. So my recollection was, there was debt 2 sales made to NCA, but it was not just Think. It 3 was the Think and then also some of the partners 4 that -- that licensed Think's products to lenders on 5 those products as well. 6 BY MR. ACKELSBURG: 7 Q. Right, but those were arranged through Bret 8 Horrocks, correct? 9 MR. SCHEFF: Object to the form. 10 A. Bret made the introduction in the -- like, 11 the proposal was made to the lender up, but it was 12 to them to decide whether they wanted to sell that 13 debt off. 14 BY MR. ACKELSBURG: 15 Q. Right. And it was -- and it was Think that 16 would decide what -- Think would actually -- how did 17 the debt sales work? Tell me how the debt sales 18 worked. 19 A. Initially, Bret did go out and talk to 20 different vendors of their level of interest in 21 purchasing debt from the various entities. 22 Proposals were made of what they would be willing to 23 pay for the debt. Those were shared with the 24 lenders, whether that be us or our partners. And 25 once that was agreed upon, there was -- a purchase</p>	<p style="text-align: right;">Page 83</p> <p>1 ready for -- ready for sale pursuant to those 2 contracts? 3 MR. SCHEFF: Object to the form; 4 compound question. 5 A. So, typically, an account would be 6 identified within the system if we -- if the lender 7 received a deceased notification, for instance, that 8 would be flagged in the system. So when those 9 accounts rolled to a charge off, they would be 10 pulled out of the file before it was sent on behalf 11 of the lender to the third party for the debt sale. 12 BY MR. ACKELSBURG: 13 Q. And the chargeoffs would be identified by 14 Think and forwarded to Brett Horrocks, correct? 15 MR. SCHEFF: Object to the form. 16 MR. GATEWOOD: Objection; form. 17 A. So, as I mentioned before, the criteria of 18 what account would be excluded was predetermined by 19 the lenders up front based on their risk appetite. 20 Because the lender licensed our platform, we 21 could -- the system had flagged within it which of 22 those accounts met that criteria before it was sold. 23 BY MR. ACKELSBURG: 24 Q. Okay. And that -- that system continued 25 into the tribal period; am I right?</p>
<p style="text-align: right;">Page 82</p> <p>1 was made and signed off on by each of the lenders, 2 whether that was as with the third-party lender, 3 depending on the portfolio. And I can't remember if 4 it happened initially or if it was over time, a -- 5 an agreed upon forward flow agreement was put in 6 place so that each month that debt was charged off 7 by the individual portfolios, that lender would sell 8 that debt to the third-party buyer. 9 Q. And there was a unit at Think Finance that 10 would -- that would determine on a monthly basis 11 what debt would be ready for sale? 12 MR. GATEWOOD: Objection; form. 13 MR. SCHEFF: Object to the form. 14 A. There would not be a -- it was not a group 15 within Think that would determine what debt would be 16 sold. What debt would be sold was agreed upon in 17 the contracts up front between the lender and the 18 buyer. So if anything was to be excluded, for 19 instance, bankruptcies or deaths of individuals, 20 those would be excluded before they were sold. 21 And... 22 BY MR. ACKELSBURG: 23 Q. And then how would the determination be 24 made? What contracts -- what contracts met -- what 25 accounts met the terms of the contracts and were</p>	<p style="text-align: right;">Page 84</p> <p>1 MR. SCHEFF: Object to the form. 2 A. This system that was -- I'm sorry, which 3 system were you talking about there? 4 BY MR. ACKELSBURG: 5 Q. That you just described. So criteria would 6 be -- would be approved by the particular lender, 7 and the system, meaning the Think Finance system, 8 would identify the -- the delinquent accounts that 9 were ready for sale, correct? 10 MR. SCHEFF: Object to the form. 11 A. So as I mentioned, with the tribal partners 12 as well, the tribal lender would set the criteria up 13 front. 14 BY MR. ACKELSBURG: 15 Q. Understood. 16 A. And was -- since the tribe -- or the lender 17 had actually licensed the system -- it was their 18 systems, but the system allowed for those accounts 19 to be flagged so that they wouldn't be sold 20 erroneously. 21 Q. Right. And they would generally be 22 forwarded to the -- the accounts would be forwarded 23 to Bret, who would then forward it to the 24 appropriate lender? Is that the way it worked? 25 A. So my recollection was that Bret did have</p>

<p style="text-align: right;">Page 85</p> <p>1 some -- there was access to certain databases that</p> <p>2 in case we weren't notified of a -- of a bankruptcy</p> <p>3 or a deceased, a part of his contract allowed him</p> <p>4 to -- to look at those files and make sure that</p> <p>5 those were excluded so they wouldn't be sold as a --</p> <p>6 as a second step or a backup step, to make sure if</p> <p>7 the system wasn't flagged, we could use these</p> <p>8 third-party databases. And he was -- he was part of</p> <p>9 the -- I would call what he was for us was part of</p> <p>10 the overall loan management system to flag those</p> <p>11 accounts.</p> <p>12 Q. Now, this stack is in -- the period of time</p> <p>13 that's October 2010, and this is roughly about the</p> <p>14 time that the -- that Think learned that First Bank</p> <p>15 of Delaware wanted to pull out of ThinkCash, right?</p> <p>16 MR. SCHEFF: Object to the form.</p> <p>17 A. So my recollection was that happened later</p> <p>18 on that year. Actually, it was -- I think it was</p> <p>19 more, like, November, but could have been late</p> <p>20 October.</p> <p>21 MR. ACKELSBURG: Well, let's look</p> <p>22 at -- let's look at another document. Maybe your</p> <p>23 recollection will be refreshed.</p> <p>24 (Exhibit No. 116 marked.)</p> <p>25 MR. GATEWOOD: This is No. 116?</p>	<p style="text-align: right;">Page 87</p> <p>1 MR. SCHEFF: Take your time,</p> <p>2 Mr. Harvison.</p> <p>3 A. (Reviews document.)</p> <p>4 Okay. Sorry.</p> <p>5 BY MR. ACKELSBURG:</p> <p>6 Q. Now, who would have been the audience for</p> <p>7 this presentation by Mr. Rees?</p> <p>8 MR. SCHEFF: Object to the form.</p> <p>9 A. Typically, this would have been shared with</p> <p>10 Ken's direct reports, the executive team at Think</p> <p>11 Finance.</p> <p>12 BY MR. ACKELSBURG:</p> <p>13 Q. That would be you, Chris Lutes. Who else?</p> <p>14 A. Sarah Cutrona, Kevin Dahlstrom. And at</p> <p>15 that point, I can't remember who our head of risk</p> <p>16 was or head of IT, but they would have been there as</p> <p>17 well.</p> <p>18 Q. Okay. And turn to page 4 of the -- of the</p> <p>19 presentation. It's 676199. And the third -- the</p> <p>20 third item, "Less focus on banks due to the current</p> <p>21 regulatory uncertainty." Do you recall during this</p> <p>22 period of time that the -- this being a discussion</p> <p>23 within -- within the executive team to find -- well,</p> <p>24 less focus on banks? Do you remember that?</p> <p>25 MR. GATEWOOD: Mr. Harvison, to the</p>
<p style="text-align: right;">Page 86</p> <p>1 MR. ACKELSBURG: Uh-huh (affirmative</p> <p>2 response).</p> <p>3 BY MR. ACKELSBURG:</p> <p>4 Q. Now, this -- this dec was not in a -- I</p> <p>5 didn't see it as a -- as a board dec. It just says</p> <p>6 "Leadership Team Session." Can you -- can you tell</p> <p>7 us who would have been preparing this and for what</p> <p>8 audience?</p> <p>9 MR. SCHEFF: Object to the form.</p> <p>10 Answer if you can.</p> <p>11 A. My recollection is this would have been Ken</p> <p>12 preparing this to chat with the executive team at</p> <p>13 Think Finance.</p> <p>14 BY MR. ACKELSBURG:</p> <p>15 Q. Ken Rees you mean?</p> <p>16 A. That's correct.</p> <p>17 Q. And so do you remember -- in looking at</p> <p>18 this, do you remember this particular presentation</p> <p>19 by Mr. Rees?</p> <p>20 MR. SCHEFF: Object to the form;</p> <p>21 misstates the testimony.</p> <p>22 A. Sorry. I'm just trying to read this real</p> <p>23 quick.</p> <p>24 BY MR. ACKELSBURG:</p> <p>25 Q. Sure.</p>	<p style="text-align: right;">Page 88</p> <p>1 extent that your recollection comes from information</p> <p>2 you obtained from Ms. Cutrona, I would instruct you</p> <p>3 not to answer.</p> <p>4 A. Sure. What I do remember that was not part</p> <p>5 of this conversation was just, well, what are other</p> <p>6 business lines can we look into to help grow the</p> <p>7 business.</p> <p>8 BY MR. ACKELSBURG:</p> <p>9 Q. Now, you were aware during this period of</p> <p>10 time that other -- other, let's say, competitors</p> <p>11 were partnering with Indian tribes; am I right,</p> <p>12 during. . .</p> <p>13 A. We were generally aware that some -- some</p> <p>14 of those operations were taking place.</p> <p>15 Q. But up until this point in time, you were</p> <p>16 not exploring partnerships with -- with Native</p> <p>17 American tribes; am I right?</p> <p>18 A. Through the years, we have looked at that</p> <p>19 model a couple of different times.</p> <p>20 Q. When do you think you looked? When do you</p> <p>21 remember looking?</p> <p>22 A. I want to say we looked at it first back in</p> <p>23 2008, and then, once again, in 2010 time frame.</p> <p>24 Q. But am I right that, you didn't pursue it</p> <p>25 because you had this relationship with First Bank of</p>

<p style="text-align: right;">Page 89</p> <p>1 Delaware and you didn't really need -- you didn't</p> <p>2 need another -- another model since ThinkCash was</p> <p>3 working so well?</p> <p>4 MR. SCHEFF: Object to the form.</p> <p>5 MR. GATEWOOD: Objection.</p> <p>6 BY MR. ACKELSBURG:</p> <p>7 Q. That would be -- that would be a fair</p> <p>8 summary, wouldn't it?</p> <p>9 A. What I recall is that our legal team</p> <p>10 couldn't get comfortable with the model in 2008, and</p> <p>11 then with some changes that took place in 2010, they</p> <p>12 were able to get comfortable with that model.</p> <p>13 Q. And do you remember what those changes</p> <p>14 were?</p> <p>15 A. Those were conversations with -- with --</p> <p>16 with Sarah, so I can't disclose those.</p> <p>17 Q. And so at some point, around -- around the</p> <p>18 time that you learned that First Bank of Delaware</p> <p>19 was going to be withdrawing from the ThinkCash</p> <p>20 product, the decision was made to begin to search</p> <p>21 for potential tribal partners?</p> <p>22 MR. GATEWOOD: Objection; form.</p> <p>23 A. So, I mean, I think if you -- if you look</p> <p>24 on slide 8, that -- you know, what we decided was --</p> <p>25 and this was a very early on presentation, but we</p>	<p style="text-align: right;">Page 91</p> <p>1 do state -- to do installment lending license on a</p> <p>2 state-by-state basis.</p> <p>3 Q. And the last thing mentioned, "Optimize</p> <p>4 ThinkCash migration and enterprise value," what did</p> <p>5 that mean?</p> <p>6 A. So that there was -- there was a portfolio</p> <p>7 there within ThinkCash, and the question was do we</p> <p>8 let that liquidate down or do you find through</p> <p>9 working with a bank, are there other products that</p> <p>10 can be offered to those consumers that were</p> <p>11 interested in the lending products.</p> <p>12 Q. So we're talking there about the -- in</p> <p>13 part, about the customer base of ThinkCash, right?</p> <p>14 A. Yes.</p> <p>15 Q. Because the way the product works was a lot</p> <p>16 of your new loan -- a lot of your -- your new</p> <p>17 originations would come from existing customers,</p> <p>18 right, returning customers?</p> <p>19 MR. GATEWOOD: Objection; form.</p> <p>20 MR. SCHEFF: Object to the form.</p> <p>21 A. So I'd say there was a good -- for the --</p> <p>22 for the ThinkCash -- for the bank, the lender there,</p> <p>23 there was a good split between new customer traffic</p> <p>24 and returning customer traffic for them.</p> <p>25 BY MR. ACKELSBURG:</p>
<p style="text-align: right;">Page 90</p> <p>1 needed to explore multiple different offers. We</p> <p>2 just lost two partners that generate somewhere</p> <p>3 between 70, 80 percent of the revenue for the</p> <p>4 business. And so we started to expand and look out</p> <p>5 for other opportunities.</p> <p>6 And I think if you look in the 2011 --</p> <p>7 actually, at the end of 2010, we actually purchased</p> <p>8 a UK business to help move down that vertical. We</p> <p>9 launched two products, one being a prepaid card</p> <p>10 product called Spendable, a rent-to-own product</p> <p>11 called Presta, and then we also started exploring</p> <p>12 and going down the path of the tribal products as</p> <p>13 well.</p> <p>14 BY MR. ACKELSBURG:</p> <p>15 Q. If you go to page 7 of the -- of the dec,</p> <p>16 it's talking about the core business, right? And so</p> <p>17 state-based ThinkCash was the -- was that pursued?</p> <p>18 A. So this is where we were looking at state</p> <p>19 license installment lending, where that could be</p> <p>20 applicable.</p> <p>21 Q. I mean, that, ultimately, is what you did</p> <p>22 with RISE, right?</p> <p>23 A. So if you look at the first two there --</p> <p>24 sorry. If you look at what we had with RISE, that's</p> <p>25 correct, we -- we ended up getting RISE licensed to</p>	<p style="text-align: right;">Page 92</p> <p>1 Q. And what part of what your -- what you</p> <p>2 didn't want to do was lose those -- the potential</p> <p>3 for those customers to return for another loan,</p> <p>4 right?</p> <p>5 MR. SCHEFF: Object to the form.</p> <p>6 A. The way I recall the -- the contracts being</p> <p>7 set up is the marketing entity, TailWind, had the --</p> <p>8 had the right to continue to market to those</p> <p>9 accounts even if the relationship with the bank</p> <p>10 terminated. So we were trying to find a way how to</p> <p>11 best market to those consumers.</p> <p>12 BY MR. ACKELSBURG:</p> <p>13 Q. Now, am I right that within -- within weeks</p> <p>14 of the discussions in October of 2010, the company</p> <p>15 had developed a tribal product -- a concept of a</p> <p>16 tribal product named Great Plains?</p> <p>17 MR. GATEWOOD: Objection; form.</p> <p>18 A. So I wouldn't characterize it within weeks.</p> <p>19 As I mentioned before, we were looking at, you know,</p> <p>20 various different initiatives, and -- and I believe</p> <p>21 Sarah was trying to evaluate what those -- what that</p> <p>22 model might look like.</p> <p>23 MR. ACKELSBURG: All right. Let's</p> <p>24 look at 118. I am going to skip -- we're going to</p> <p>25 skip 117.</p>

<p style="text-align: right;">Page 93</p> <p>1 MR. SCHEFF: I want to take about a</p> <p>2 three-minute bio break.</p> <p>3 MR. ACKELSBURG: Okay.</p> <p>4 THE VIDEOGRAPHER: Off the record? We</p> <p>5 are off the record. The time is 11:08 a m.</p> <p>6 (Break taken, 11:08 a m. to 11:12 a m.)</p> <p>7 THE VIDEOGRAPHER: We are back on the</p> <p>8 record. The time is 11:12 a m.</p> <p>9 (Exhibit No. 118 marked.)</p> <p>10 BY MR. ACKELSBURG:</p> <p>11 Q. So, Mr. Harvison, I show you what's been</p> <p>12 marked as Plaintiff's Exhibit 118. I am showing you</p> <p>13 another one of these reports to the board by</p> <p>14 Mr. Rees. And you see it's -- the date is</p> <p>15 November 17th, 2010?</p> <p>16 A. Yes.</p> <p>17 Q. Okay. And do you see in the second</p> <p>18 paragraph that Ken is discussing -- he says, "We'll</p> <p>19 discuss our plans for moving ahead with Great Plains</p> <p>20 Financial"?</p> <p>21 A. I do see that.</p> <p>22 Q. Okay. So by November 17th, 2010, there was</p> <p>23 a concept that was being developed internally in the</p> <p>24 company called Great Plains Financial; am I right?</p> <p>25 MR. SCHEFF: Object to the form.</p>	<p style="text-align: right;">Page 95</p> <p>1 set up, in conjunction at the same time of could we</p> <p>2 build -- or use the technology we had already built</p> <p>3 with bank partners to be used with tribal lenders as</p> <p>4 well.</p> <p>5 BY MR. ACKELSBURG:</p> <p>6 Q. And you already began doing that, didn't</p> <p>7 you? As of this point in time, there were people</p> <p>8 that were actually building that, weren't they?</p> <p>9 MR. SCHEFF: Object to the form.</p> <p>10 MR. GATEWOOD: Because the witness has</p> <p>11 testified previously that the legal group was --</p> <p>12 MR. ACKELSBURG: I'm not talking about</p> <p>13 the legal.</p> <p>14 MR. GATEWOOD: Hold on -- that the</p> <p>15 legal group was reviewing several options that had</p> <p>16 been developed, I would instruct the witness not to</p> <p>17 answer to the extent that it calls for information</p> <p>18 that was derived from legal counsel.</p> <p>19 A. Sure. So -- so I would probably put this</p> <p>20 in context of in October we were notified by First</p> <p>21 Bank of Delaware that they were exiting the program</p> <p>22 in December. So from an organizational standpoint,</p> <p>23 we had just lost one of our biggest partners. So</p> <p>24 when that happens, obviously, you saw from the</p> <p>25 earlier slide dec, that we were looking to explore</p>
<p style="text-align: right;">Page 94</p> <p>1 A. What I remember is we were exploring that</p> <p>2 option along with other options we talked about</p> <p>3 earlier.</p> <p>4 BY MR. ACKELSBURG:</p> <p>5 Q. Yeah, but there was a group that was</p> <p>6 actually putting together the infrastructure for a</p> <p>7 potential tribal product called Great Plains</p> <p>8 Financial, was there not?</p> <p>9 MR. SCHEFF: Object to the form; asked</p> <p>10 and answered.</p> <p>11 You can answer it again.</p> <p>12 A. As I mentioned, there was a -- there was a</p> <p>13 group looking at how a product could be put together</p> <p>14 for a tribal partner. That was one area they were</p> <p>15 exploring.</p> <p>16 BY MR. ACKELSBURG:</p> <p>17 Q. And by "exploring," meaning they're --</p> <p>18 they're actually coming up with mock -- mock-ups for</p> <p>19 websites, right? That was one of the things that</p> <p>20 was being done?</p> <p>21 MR. SCHEFF: Object to the form.</p> <p>22 MR. GATEWOOD: Objection; form.</p> <p>23 A. So what I would say from an exploration --</p> <p>24 exploration standpoint, the team was looking at the</p> <p>25 legal structure of how a tribal partnership could be</p>	<p style="text-align: right;">Page 96</p> <p>1 multiple different things, which means you might</p> <p>2 have to take some chances and make investments to</p> <p>3 build some things out that may or may not come to</p> <p>4 fruition.</p> <p>5 So we spent a lot of time exploring the UK</p> <p>6 operation. We actually built, as I talked about</p> <p>7 earlier, two other products that were launched in</p> <p>8 2011 that were eventually shut down. And this is an</p> <p>9 example where we were exploring the regulatory</p> <p>10 model, but at the same time, we said let's go ahead</p> <p>11 and invest some on the IT side and -- in hopes that</p> <p>12 everything works out so we're a step ahead.</p> <p>13 If it didn't work out, then that would</p> <p>14 have been an opportunity cost that we would have</p> <p>15 missed out on, but it was -- it was an investment we</p> <p>16 were willing to make as we were exploring multiple</p> <p>17 different options at that time.</p> <p>18 BY MR. ACKELSBURG:</p> <p>19 Q. And who came up with the name Great Plains</p> <p>20 Financial?</p> <p>21 A. That would have been somebody on our</p> <p>22 marketing team.</p> <p>23 Q. And if you'd turn to the second page, the</p> <p>24 last paragraph under "ThinkCash," where Mr. Rees</p> <p>25 says, "As mentioned above, we propose to migrate the</p>

<p style="text-align: right;">Page 97</p> <p>1 balances to another lender that will be able to lend</p> <p>2 in 48 states except South Dakota and West Virginia."</p> <p>3 Do you see that?</p> <p>4 A. I do see that.</p> <p>5 Q. All right. And do you know why South</p> <p>6 Dakota and West Virginia was excluded at that point?</p> <p>7 A. I don't know why Ken wrote those two states</p> <p>8 in the memo.</p> <p>9 Q. Okay. Now, am I right that what was being</p> <p>10 explored was the possibility of migrating the</p> <p>11 ThinkCash customer base to a potential tribal</p> <p>12 lender?</p> <p>13 MR. SCHEFF: Object to the form.</p> <p>14 BY MR. ACKELSBURG:</p> <p>15 Q. That's what was being contemplated then</p> <p>16 and -- at this point?</p> <p>17 A. So the way I recall, I don't know if</p> <p>18 migrate the balance was the best use of the words in</p> <p>19 this -- this memo, as I -- as I mentioned earlier,</p> <p>20 we were looking for other partners that we could --</p> <p>21 we could help market loans to their site. But part</p> <p>22 of the conversation -- I don't know -- I don't know</p> <p>23 if the balance would actually be purchased unless we</p> <p>24 found a lender that had the balance sheet to</p> <p>25 actually purchase that from the bank. It would be</p>	<p style="text-align: right;">Page 99</p> <p>1 sorry -- at some point in November of 2010, an</p> <p>2 actual decision was made within the company, within</p> <p>3 the executive team to pursue a tribal partner,</p> <p>4 correct?</p> <p>5 MR. GATEWOOD: Objection; form.</p> <p>6 MR. SCHEFF: Object to the form.</p> <p>7 A. Yes.</p> <p>8 BY MR. ACKELSBURG:</p> <p>9 Q. Okay. And the first tribe that was</p> <p>10 identified as a potential trib- -- as a -- as a</p> <p>11 partner was the Otoe-Missouria tribe that was</p> <p>12 loca- -- that was identified in January of 2011,</p> <p>13 correct?</p> <p>14 A. Actually, prior to talking with the</p> <p>15 Otoe-Missouria tribe, there was another group that</p> <p>16 we were in contact with that was a group out of, I</p> <p>17 believe, South Dakota. And we went through</p> <p>18 extensive conversations with that group but couldn't</p> <p>19 get comfortable with their model being that it was a</p> <p>20 member of the tribe wanting to be the lender versus</p> <p>21 an entity of the tribe. And so we actually walked</p> <p>22 away from that deal and found the Otoe-Missouria</p> <p>23 tribe to begin talking to.</p> <p>24 Q. So the first -- the first tribe that you</p> <p>25 found -- that you were comfortable with pursuing a</p>
<p style="text-align: right;">Page 98</p> <p>1 more about a partner that we could -- we could help</p> <p>2 market some of these products to.</p> <p>3 Q. All right. What I want to do now is sort</p> <p>4 of -- I'm going to take you through a number of</p> <p>5 these board meetings, but I want to jump ahead to</p> <p>6 April 15th of 2011. And there's a portion of that</p> <p>7 dec that I want to -- that I want to show you.</p> <p>8 MR. ACKELSBURG: And this is P-119.</p> <p>9 (Exhibit No. 119 marked.)</p> <p>10 MR. ACKELSBURG: I did -- I did copy</p> <p>11 the -- Richard, if you would like to have -- for</p> <p>12 your benefit, I have the various pieces of that</p> <p>13 agenda, which is the next page from the cover page</p> <p>14 so you can see what was there. And I've just taken</p> <p>15 the piece called "Tribal Lending Update."</p> <p>16 MR. SCHEFF: In the future, just mark</p> <p>17 the entire dec as an exhibit.</p> <p>18 BY MR. ACKELSBURG:</p> <p>19 Q. Now, there's a -- there's a timeline in</p> <p>20 this section called "Tribal Update." And I'm</p> <p>21 looking at TF-PA 670175. And I want to just have</p> <p>22 you look at this timeline and ask if it is</p> <p>23 consistent with what you remember?</p> <p>24 A. This seems about right.</p> <p>25 Q. Okay. So at some point in December -- I'm</p>	<p style="text-align: right;">Page 100</p> <p>1 potential partnership was the Otoe-Missouria, and</p> <p>2 that occurred in roughly January of 2011?</p> <p>3 A. Well, it -- yeah, it was the second tribe</p> <p>4 that we went through due diligence with and began to</p> <p>5 move forward with the contracts. Yes, the first one</p> <p>6 with contracts was the Otoe-Missouria.</p> <p>7 Q. Well, there was no contract yet as of</p> <p>8 January 2011; am I right?</p> <p>9 A. I'm sorry, I meant to say working through</p> <p>10 contracts, like it says here.</p> <p>11 Q. Yeah. Okay. And then by Feb- -- according</p> <p>12 to this timeline, by February 16, 2011, the</p> <p>13 contracts were all in place and you were just</p> <p>14 waiting for the -- for the tribe to agree, right?</p> <p>15 MR. GATEWOOD: Objection; form.</p> <p>16 BY MR. ACKELSBURG:</p> <p>17 Q. That's what -- that's what that says,</p> <p>18 right?</p> <p>19 MR. SCHEFF: Object to the form.</p> <p>20 You can answer if you can.</p> <p>21 A. So I don't remember exactly what was taking</p> <p>22 place in February. I know there's still contract</p> <p>23 negotiations -- contract negotiations going on, but</p> <p>24 I don't know what -- what spot they were in in that</p> <p>25 process.</p>

<p style="text-align: right;">Page 101</p> <p>1 BY MR. ACKELSBURG:</p> <p>2 Q. Now, up until that point in time, the hope</p> <p>3 was that the ThinkCash customers would -- could be</p> <p>4 migrated to Great Plains Lending. That was the hope</p> <p>5 at that time, right?</p> <p>6 MR. SCHEFF: Object to the form.</p> <p>7 A. I guess I go back and -- and reiterate what</p> <p>8 I've said before, the -- when we -- if we were able</p> <p>9 to find a partner that could lend across states</p> <p>10 similar to what First Bank of Delaware was lending</p> <p>11 in, it wasn't to migrate the portfolios but to</p> <p>12 remarket to former customers of -- of that</p> <p>13 portfolio.</p> <p>14 BY MR. ACKELSBURG:</p> <p>15 Q. Okay. And according to this timeline,</p> <p>16 though, there was a tribe switch. Instead of</p> <p>17 signing with the Otoe-Missouria, the company signed</p> <p>18 with the Chippewa Cree tribe. Do you remember that?</p> <p>19 A. Yes, I do remember that.</p> <p>20 Q. And that just 20 days from the contract</p> <p>21 signing with the Chippewa Cree, Plain Green went</p> <p>22 live on April 5th, 2011. Do you remember that?</p> <p>23 A. I do.</p> <p>24 Q. Okay. If you continue with this -- with</p> <p>25 this dec, there's some pictures, and then if --</p>	<p style="text-align: right;">Page 103</p> <p>1 Q. All right. Now, if you can flip the page,</p> <p>2 we're now on -- this is TF-PA 670182. I was</p> <p>3 wondering if you could explain this slide, "Multiple</p> <p>4 Sites = Differentiation."</p> <p>5 A. So it's been a while since I've looked at</p> <p>6 something like this, but what -- at a high level,</p> <p>7 what I remember was when we were first exploring</p> <p>8 multiple partnerships, do we talk to the tribes from</p> <p>9 the marketing standpoint, do they want to be channel</p> <p>10 specific or have more of a product functionality</p> <p>11 differentiation. And so this was one concept of</p> <p>12 could we propose to different tribes of where they</p> <p>13 want to be channel specific, meaning which channels</p> <p>14 we market for them to acquire customers through, to</p> <p>15 be that kind of a primary source of traffic.</p> <p>16 Q. What would it -- what does the term</p> <p>17 "affiliate only" mean?</p> <p>18 A. Affiliate only, at that point in time, was</p> <p>19 really referring to certain partnerships. I can't</p> <p>20 remember back at that point in time. Today would be</p> <p>21 somebody, like, a Credit Karma or a Credit Sesame.</p> <p>22 But I can't remember exactly who those affiliates</p> <p>23 would be at that point in time.</p> <p>24 Q. Meaning other websites that would -- that</p> <p>25 would be a source of leads?</p>
<p style="text-align: right;">Page 102</p> <p>1 there's a mock-up of -- it's page 670178. It's a</p> <p>2 mock-up of the website, a page on the website Plain</p> <p>3 Green, right?</p> <p>4 MR. SCHEFF: Object to the form.</p> <p>5 A. Yes, it's a mock-up of a website.</p> <p>6 BY MR. ACKELSBURG:</p> <p>7 Q. And then the next page, it gives some sense</p> <p>8 of the loan volume that occurred on the first day</p> <p>9 that Plain Green went live. Do you see that?</p> <p>10 A. I do.</p> <p>11 Q. The following slide refers to price</p> <p>12 changes, and I think it's comparing the ThinkCash</p> <p>13 price to the price that would be on the Plain Green</p> <p>14 site. Do you -- do you remember anything about</p> <p>15 these price changes?</p> <p>16 MR. SCHEFF: Object to the form.</p> <p>17 A. I mean, I was -- I was part of the</p> <p>18 conversations, but I'd have to refresh my memory on</p> <p>19 all of it. But, vaguely, I remember this, yes.</p> <p>20 BY MR. ACKELSBURG:</p> <p>21 Q. Okay. And the following page, too,</p> <p>22 actually has the -- the new prices that were on</p> <p>23 the -- on the Plain Green site?</p> <p>24 A. Yeah, so what I remember, this is what we</p> <p>25 proposed to -- to the tribe for them to review.</p>	<p style="text-align: right;">Page 104</p> <p>1 A. It would be a -- a lead, yes, like, a</p> <p>2 Lending Tree that they could -- we could help them</p> <p>3 partner with to draw traffic to.</p> <p>4 Q. And what would -- what does "Paid Search"</p> <p>5 referred to?</p> <p>6 A. Paid search is if you go and put an ad on</p> <p>7 Google or Yahoo, there's a pay for placement so you</p> <p>8 can advertise the product there.</p> <p>9 Q. And what about -- and there's "DM." That</p> <p>10 means direct mail; am I right?</p> <p>11 A. DM would stand for direct mail, yes.</p> <p>12 Q. And what does affiliate stand for?</p> <p>13 A. It would be the same affiliate conversation</p> <p>14 we just had.</p> <p>15 Q. Meaning -- right, okay. Right.</p> <p>16 And lead generator, what would a lead</p> <p>17 generator be as opposed to an affiliate? What's the</p> <p>18 difference?</p> <p>19 MR. SCHEFF: Object to the form.</p> <p>20 A. So back in this time frame, there was a</p> <p>21 channel that we -- we termed internally lead</p> <p>22 generators, and that was third parties that would</p> <p>23 also aggregate sites -- aggregate traffic, but there</p> <p>24 was a bidding model to where you could bid on the</p> <p>25 traffic coming through, so multiple lenders could</p>

<p>Page 105</p> <p>1 bid at the same time to try to buy that traffic.</p> <p>2 And it was a thought of could we make -- could we</p> <p>3 use that channel as a driver of traffic.</p> <p>4 BY MR. ACKELSBURG:</p> <p>5 Q. Eventually -- so you signed up Great Plains</p> <p>6 Lending and you signed up Plain Green. And were --</p> <p>7 did these two tribes, the Chippewa Cree and</p> <p>8 Otoe-Missouria, did they get a particular kind of</p> <p>9 assignment of marketing channel like as contemplated</p> <p>10 within this -- within this slide?</p> <p>11 MR. GATEWOOD: Objection; form.</p> <p>12 MR. SCHEFF: Object to the form.</p> <p>13 A. So this was just as the programs were being</p> <p>14 launched. What -- what I remember is they ended up</p> <p>15 actually having a multichannel acquisition strategy.</p> <p>16 So it didn't ever play out the way like it was laid</p> <p>17 out here. They had the ability to drive traffic</p> <p>18 from multiple channels.</p> <p>19 BY MR. ACKELSBURG:</p> <p>20 Q. All right. Now, we're going to -- we'll</p> <p>21 refer back to the timeline, but I want to in the</p> <p>22 next -- in the next exhibit go back in time a little</p> <p>23 bit to December of 2010. And this is a dec entitled</p> <p>24 "Great Plains Lending, December 2010."</p> <p>25 MR. ACKELSBURG: This is exhibit --</p>	<p>Page 107</p> <p>1 trying to do a new deal transaction, regardless what</p> <p>2 size, there's going to be a dec put together to</p> <p>3 introduce the two organizations and what -- what the</p> <p>4 proposed topic is going to be. So it's a standard</p> <p>5 format of how we make an introduction, whether it's</p> <p>6 to a bank, a tribe, a creative agency, whoever it</p> <p>7 is, we -- we put together some sort of dec for that</p> <p>8 conversation.</p> <p>9 BY MR. ACKELSBURG:</p> <p>10 Q. And this would be done under your</p> <p>11 supervision?</p> <p>12 A. It would depend on the partner and what the</p> <p>13 complexities of that relationship might be.</p> <p>14 Q. Well, with regard to Great Plains, were --</p> <p>15 you were involved in that approach, were you not?</p> <p>16 MR. SCHEFF: Object to the form.</p> <p>17 A. I was involved in those conversations.</p> <p>18 BY MR. ACKELSBURG:</p> <p>19 Q. Okay. And so this -- this presentation,</p> <p>20 what we're looking at, was likely prepared for the</p> <p>21 purpose of -- of a presentation made to the</p> <p>22 Otoe-Missouria, right, about what the Great Plains</p> <p>23 Lending concept would look like?</p> <p>24 MR. GATEWOOD: Objection; form.</p> <p>25 MR. SCHEFF: Object to the form.</p>
<p>Page 106</p> <p>1 Plaintiff's Exhibit 120.</p> <p>2 (Exhibit No. 120 marked.)</p> <p>3 BY MR. ACKELSBURG:</p> <p>4 Q. Now, referring back just a second to the</p> <p>5 timeline, January is when you -- was when the</p> <p>6 company -- January of 2011 is when the company first</p> <p>7 became comfortable with the Otoe-Missouria and</p> <p>8 decided to pursue it. This dec that -- this</p> <p>9 presentation that we're looking at is from the</p> <p>10 previous month, December 2010, and I want to ask you</p> <p>11 what -- first of all, are you familiar with this</p> <p>12 dec, or do you recall decs like this from this</p> <p>13 period of time?</p> <p>14 MR. SCHEFF: Object to the form.</p> <p>15 A. So I don't remember the specific dec, but I</p> <p>16 have seen similar content in other decs.</p> <p>17 BY MR. ACKELSBURG:</p> <p>18 Q. And when you were -- am I right that when</p> <p>19 the company was discussing in the early stages the</p> <p>20 potential partnership with -- with a Native American</p> <p>21 tribe, part of that process would be to -- to use</p> <p>22 PowerPoint presentations like this one, like P-120?</p> <p>23 Am I right?</p> <p>24 MR. GATEWOOD: Objection; form.</p> <p>25 A. So I'll tell you, I mean, anytime you're</p>	<p>Page 108</p> <p>1 A. Right. So as I mentioned, I don't know if</p> <p>2 this is the exact presentation that we used for the</p> <p>3 introduction, but when we met with them for the</p> <p>4 first time, we would make some sort of presentation</p> <p>5 telling them about what -- who Think Finance was and</p> <p>6 what a possible product could like if they were</p> <p>7 willing to move forward.</p> <p>8 BY MR. ACKELSBURG:</p> <p>9 Q. And you would use a dec that looks like --</p> <p>10 roughly like this, right?</p> <p>11 MR. SCHEFF: Object to the form; asked</p> <p>12 and answered.</p> <p>13 You can answer it again.</p> <p>14 A. It would be similar to something like this.</p> <p>15 BY MR. ACKELSBURG:</p> <p>16 Q. Now, if -- if you'd turn to TF-PA 13289,</p> <p>17 that's a familiar look- -- oh, I'm sorry, you're not</p> <p>18 there.</p> <p>19 A. I'm sorry.</p> <p>20 Q. Now, what we're looking at here is a -- is</p> <p>21 a revised version of the graphic for ThinkCash that</p> <p>22 was in that document we looked at at the beginning</p> <p>23 of the deposition, right?</p> <p>24 MR. SCHEFF: Object to the form.</p> <p>25 A. This is a similar slide that we showed.</p>

<p style="text-align: right;">Page 109</p> <p>1 BY MR. ACKELSBURG:</p> <p>2 Q. So, basically -- and that's because in</p> <p>3 designing the Think -- in designing the Great Plains</p> <p>4 product, the idea was to try to -- to continue as</p> <p>5 much as possible what -- what the company -- the</p> <p>6 model that had been used with the bank?</p> <p>7 MR. SCHEFF: Object to the form.</p> <p>8 MR. GATEWOOD: Objection; form.</p> <p>9 BY MR. ACKELSBURG:</p> <p>10 Q. With the First Bank of Delaware.</p> <p>11 A. So I would say, you know, over time we had</p> <p>12 developed a servicing platform, and who that lender</p> <p>13 is could be a number of different parties. And so</p> <p>14 we had done quite a bit of work building that out</p> <p>15 for a couple of our bank partners previously. And I</p> <p>16 think it's prudent business practice to try to use</p> <p>17 that on a go-forward basis, if we could find another</p> <p>18 lender that was -- was agreeable to that product</p> <p>19 construct.</p> <p>20 Q. Okay. Understood.</p> <p>21 And what -- would this have been -- what</p> <p>22 team would be working on graphics like this that</p> <p>23 we're looking at?</p> <p>24 A. I can't remember if this was a slide that</p> <p>25 somebody on my team put together or if Ken put it</p>	<p style="text-align: right;">Page 111</p> <p>1 Q. Now, there -- if you look, you see there's</p> <p>2 "Great Plains Customer Support," and there's a phone</p> <p>3 number there, right? And then to the right of that,</p> <p>4 there's another entity mentioned, GPL Servicing,</p> <p>5 LLC, Customer Support, in Wilmington, Delaware. Do</p> <p>6 you see that?</p> <p>7 A. I do.</p> <p>8 Q. Do you know what that reference is?</p> <p>9 A. So as I mentioned before, this is a draft</p> <p>10 document on an intro presentation, so this -- this</p> <p>11 could have been a mock-up from an old program and we</p> <p>12 just tried to switch out some -- some of the</p> <p>13 language and graphics just to give them an idea. So</p> <p>14 this could have been coming from anywhere. I don't</p> <p>15 know.</p> <p>16 Q. Now, other than changing the name and the</p> <p>17 graphics, how much of the infrastructure from</p> <p>18 ThinkCash were you able to use in creating the</p> <p>19 tribal installment loan platforms?</p> <p>20 MR. SCHEFF: Object to the form.</p> <p>21 MR. GATEWOOD: Objection; form.</p> <p>22 A. I mean, I think if you look at what Think</p> <p>23 had created, an installment loan platform is -- is</p> <p>24 fairly straightforward. So once it was created, it</p> <p>25 could be duplicated and -- and reused, just like a</p>
<p style="text-align: right;">Page 110</p> <p>1 together, but it would be one of ours working</p> <p>2 together on it.</p> <p>3 Q. So either your team or Ken?</p> <p>4 A. Correct.</p> <p>5 Q. Now, if you'd -- if you'd turn back a few</p> <p>6 pages.</p> <p>7 A. Which page?</p> <p>8 Q. 13286. Now, this is a -- again, a mock-up</p> <p>9 of something a consumer might see in -- under this</p> <p>10 Great Plains Lending model, right? That's what</p> <p>11 we're looking at here?</p> <p>12 A. So I remember this. This is, really, just</p> <p>13 a draft of what could be done. I don't know if it</p> <p>14 was actually put into production.</p> <p>15 Q. And what about the actual phone numbers,</p> <p>16 the 877 phone numbers, where would that -- those</p> <p>17 numbers have been to?</p> <p>18 A. I don't recall.</p> <p>19 Q. It likely was somewhere in the Fort Worth</p> <p>20 office?</p> <p>21 MR. GATEWOOD: Objection; form.</p> <p>22 MR. SCHEFF: Object to the form.</p> <p>23 A. I have no idea where these numbers went to.</p> <p>24 It was a draft document.</p> <p>25 BY MR. ACKELSBURG:</p>	<p style="text-align: right;">Page 112</p> <p>1 Fiserv, once they create their accrual system for</p> <p>2 many banks to use was there. So we were able to,</p> <p>3 you know, work with -- with the first partner, and</p> <p>4 it actually ended up being Plain Green. But they</p> <p>5 were able to design what the product features and</p> <p>6 the look and feel. So we would have to make some UX</p> <p>7 changes and some pricing and loan structure changes,</p> <p>8 but the core mechanics of the system had already</p> <p>9 been built out.</p> <p>10 MR. ACKELSBURG: Okay. All right.</p> <p>11 Let's look at the next dec. This is Exhibit 121.</p> <p>12 (Exhibit No. 121 marked.)</p> <p>13</p> <p>14 BY MR. ACKELSBURG:</p> <p>15 Q. So when you -- you mentioned that --</p> <p>16 A. I'm sorry, can I just look at this real</p> <p>17 quick?</p> <p>18 Q. Sure. Sure.</p> <p>19 A. (Reviews document.)</p> <p>20 Okay.</p> <p>21 Q. So the fist dec you'll see is titled "Great</p> <p>22 Plains Lending," and it's from December of 2010.</p> <p>23 The second dec --</p> <p>24 MR. SCHEFF: Object to the form;</p> <p>25 misstates the exhibit.</p>

<p style="text-align: right;">Page 113</p> <p>1 BY MR. ACKELSBURG:</p> <p>2 Q. Well, I'll do it again. The first dec is</p> <p>3 entitled "Great Plains Lending," right? That was --</p> <p>4 MR. SCHEFF: Object to the form;</p> <p>5 misstates --</p> <p>6 BY MR. ACKELSBURG:</p> <p>7 Q. Do you see that, the -- looking at 120,</p> <p>8 Exhibit 120?</p> <p>9 A. I see that.</p> <p>10 Q. Right? And then this next -- 121 is</p> <p>11 entitled "Great Plains Lending Meeting," with a date</p> <p>12 of January 12th, of 2011. Do you see that?</p> <p>13 A. I do.</p> <p>14 Q. Is it likely that this is the one that was</p> <p>15 actually -- the version that was actually used at</p> <p>16 the meeting with the Otoe-Missouria?</p> <p>17 MR. SCHEFF: Object to the form.</p> <p>18 You can answer the question if you can.</p> <p>19 A. I'd have to say, I mean, I don't know</p> <p>20 exactly which final dec was used to present to the</p> <p>21 dec -- I mean, present to the -- the partner, but --</p> <p>22 so I can't say that this is the exact one.</p> <p>23 BY MR. ACKELSBURG:</p> <p>24 Q. Okay. Is there anyone who would have a</p> <p>25 better idea of, like, what specifically was used in</p>	<p style="text-align: right;">Page 115</p> <p>1 look at the next dec, which is 122.</p> <p>2 (Exhibit No. 122 marked.)</p> <p>3 BY MR. ACKELSBURG:</p> <p>4 Q. Now, it appears that this -- this was</p> <p>5 prepared for a -- does it look to you like this was</p> <p>6 prepared for a meeting with a -- with a different</p> <p>7 tribe than the -- than the Otoe-Missouria?</p> <p>8 MR. SCHEFF: Object to the form.</p> <p>9 A. So this looks similar to an intro dec we</p> <p>10 might use to go talk to a potential partner.</p> <p>11 BY MR. ACKELSBURG:</p> <p>12 Q. And if you went to -- like, do you remember</p> <p>13 the initial meeting with the Chippewa Cree?</p> <p>14 A. I don't remember off the top of my head. I</p> <p>15 mean, I know we had one, obviously.</p> <p>16 Q. And was it the same? You, Michelle, Ken</p> <p>17 and someone from legal?</p> <p>18 A. I would say the -- I'm sorry, did you say</p> <p>19 the Chippewa Cree tribe?</p> <p>20 Q. Yes.</p> <p>21 A. With the Chippewa Cree tribe, it would have</p> <p>22 probably been myself and another gentleman named</p> <p>23 Steve Schafer and Michelle meeting with them.</p> <p>24 Q. And who was Steve Schafer?</p> <p>25 A. He was a board member at that time at Think</p>
<p style="text-align: right;">Page 114</p> <p>1 the -- well, let me ask you this: In the meetings</p> <p>2 with, let's just say the Otoe-Missouria, who was</p> <p>3 involved in the initial meeting with the</p> <p>4 Otoe-Missouria?</p> <p>5 A. That probably would have been myself and</p> <p>6 Michelle.</p> <p>7 Q. Michelle Nguyen?</p> <p>8 A. Michelle Nguyen, yes.</p> <p>9 Q. That's N-g-u-y-e-n.</p> <p>10 A. And probably Ken and maybe somebody on our</p> <p>11 legal team.</p> <p>12 Q. So probably -- roughly, maybe four people</p> <p>13 that's --</p> <p>14 A. It would depend on what level of -- what</p> <p>15 stage we were at. Early on it would have been</p> <p>16 probably there's three or four. As we got closer to</p> <p>17 finalizing contracts, we'd bring in a much more</p> <p>18 expanded team and -- so we could dive deeper into IT</p> <p>19 and operations and -- and risk management, things</p> <p>20 like that.</p> <p>21 Q. But when you were still at the exploratory</p> <p>22 phase, it would likely have been you, Michelle</p> <p>23 Nguyen, Ken Rees and someone from legal?</p> <p>24 A. That's correct.</p> <p>25 MR. ACKELSBURG: Okay. Now, let's</p>	<p style="text-align: right;">Page 116</p> <p>1 Finance.</p> <p>2 Q. And why would he have been at that meeting?</p> <p>3 A. He had volunteered to help out since a lot</p> <p>4 of this was going to sales calls, going to talk to</p> <p>5 banks or to tribes, he had volunteered to help out</p> <p>6 to go make some of those calls for us.</p> <p>7 Q. Okay. And when you and Mr. Schafer went to</p> <p>8 meet with the Chippewa Cree, did you also have a</p> <p>9 PowerPoint presentation that you used?</p> <p>10 A. I'm sure we did, yes.</p> <p>11 Q. Okay. And might this be the one that you</p> <p>12 presented to the Chippewa Cree?</p> <p>13 MR. SCHEFF: Object to the form.</p> <p>14 A. As I mentioned, I can't remember exactly</p> <p>15 which slide dec it was. So I can't say this is the</p> <p>16 one that we -- we used, but I know we used</p> <p>17 something.</p> <p>18 BY MR. ACKELSBURG:</p> <p>19 Q. And this is -- this is a slightly different</p> <p>20 format than the last ones we talked to. This has a</p> <p>21 title "Emergency Cash Lending, A New Source of</p> <p>22 Tribal Revenue." Do you remember that -- do you</p> <p>23 remember that title? Do you remember that approach</p> <p>24 to the -- to the presentations?</p> <p>25 MR. GATEWOOD: Objection; form.</p>

<p style="text-align: right;">Page 117</p> <p>1 A. Yeah, my recollection was a slide titled</p> <p>2 like this was when we wanted to go talk to, you</p> <p>3 know, first-time potential partners to make the</p> <p>4 introduction.</p> <p>5 BY MR. ACKELSBURG:</p> <p>6 Q. Okay. All right. And if you look at the</p> <p>7 second page, this is a slide that -- that you used</p> <p>8 with first-time partners?</p> <p>9 A. Potentially, yes.</p> <p>10 Q. There's a -- there's a term called a</p> <p>11 "turnkey solution." I've seen that referenced in a</p> <p>12 number of documents. I mean, that was a term that</p> <p>13 you used in the -- in the sales presentations?</p> <p>14 MR. GATEWOOD: Objection; form.</p> <p>15 A. Yes, it was in some of the docs.</p> <p>16 BY MR. ACKELSBURG:</p> <p>17 Q. And in your own words, what -- what's a</p> <p>18 turnkey solution?</p> <p>19 A. To me, when we referenced turnkey, it was</p> <p>20 that we had the core of the system or platform</p> <p>21 created, and then working with the partner, we could</p> <p>22 customize it to their best fitting. But it was</p> <p>23 on -- I'll use the example again of, like, a Fiserv</p> <p>24 to where they have a turnkey solution for running</p> <p>25 banks with back-end operations that's there, ready</p>	<p style="text-align: right;">Page 119</p> <p>1 Q. Well, I under- -- I'm not really referring</p> <p>2 to some risk that may have -- may have been added to</p> <p>3 this -- to the relationship later on. I'm talking</p> <p>4 about early on, though. I mean, you were, in fact,</p> <p>5 representing early on that the tribe would have no</p> <p>6 risk of loss; am I right?</p> <p>7 MR. GATEWOOD: Objection; form.</p> <p>8 MR. SCHEFF: Object to the form.</p> <p>9 A. As I just said, looking back on this, I</p> <p>10 don't know if that was the best set of words to use</p> <p>11 in this presentation, because when we talk about it</p> <p>12 later on, there are things that are expected of the</p> <p>13 tribe and they do have exposures.</p> <p>14 Q. You're talking about on page 12?</p> <p>15 MR. SCHEFF: Don't cut him off. Don't</p> <p>16 cut him off, please. Let him finish his answer.</p> <p>17 BY MR. ACKELSBURG:</p> <p>18 Q. Are you talking about page 12?</p> <p>19 A. I'm sorry, I'm on page 2.</p> <p>20 Q. No, but when you say "later on," that's</p> <p>21 what --</p> <p>22 A. So, I'm sorry, within this dec, when we're</p> <p>23 talking to the tribes, these are expectations that</p> <p>24 would be set out of what they would need to do to --</p> <p>25 and as I mentioned, as you go through the</p>
<p style="text-align: right;">Page 118</p> <p>1 to go, just needs some configuration and approval of</p> <p>2 the partner on how they want to set up the program.</p> <p>3 Q. Okay. And just looking at the last</p> <p>4 paragraph, why don't you read it out loud?</p> <p>5 A. It says, "Using Think Finance" -- "Think</p> <p>6 Finance technology and services, tribes can generate</p> <p>7 millions of dollars in cash flow with no investment</p> <p>8 in technology, lending capital or marketing costs</p> <p>9 and with no risk of loss."</p> <p>10 Q. And, in fact, that's what -- what Think was</p> <p>11 offering, right? I mean, this is exactly that,</p> <p>12 right?</p> <p>13 A. Well, I mean, when I go through this dec</p> <p>14 and look back at -- we have that -- that paragraph</p> <p>15 up front, but as the -- as the programs were</p> <p>16 established, there was a risk of loss created that</p> <p>17 ended up being as part of the program. So I don't</p> <p>18 know if that was the best term to use in this</p> <p>19 presentation. I think, also, if you look back, you</p> <p>20 know, there are expectations -- I think we look back</p> <p>21 on slide 12, of different expectations that were</p> <p>22 needed from the tribe as part of this process to</p> <p>23 keep the product up and running and to have staff</p> <p>24 and things like that. So there is some risk there</p> <p>25 for the tribes.</p>	<p style="text-align: right;">Page 120</p> <p>1 negotiation process, in the product struc- -- the</p> <p>2 program changed or is modified, there is some</p> <p>3 ownership that the tribes had in -- in each of the</p> <p>4 programs that were launched.</p> <p>5 Q. So let's go to -- let's go to page 12. And</p> <p>6 is that -- you know, the title is "Think Finance &</p> <p>7 Tribe Partner Roles: Who does what?" So this is --</p> <p>8 this is attempting to break out for the potential</p> <p>9 tribal partner what Think Finance does and what the</p> <p>10 tribal entity would do, right?</p> <p>11 A. So this is, you know, a 30,000 foot</p> <p>12 overview of what would be done, and there's -- I</p> <p>13 think we even have other presentations that go into</p> <p>14 more detail of what that expands into, but this is</p> <p>15 the 30,000 foot level, yes.</p> <p>16 Q. And so with regard to consumer marketing,</p> <p>17 Think Finance has the platform, it has the ads,</p> <p>18 it -- it comes up with the radio, TV, print. It has</p> <p>19 the search engines. It has the brand development.</p> <p>20 And the role of the tribe would be to review and</p> <p>21 approve anything that went out under the name of the</p> <p>22 tribe, right?</p> <p>23 A. And make any changes they see necessary.</p> <p>24 Q. Right. Okay. Anything else the tribe</p> <p>25 would do with regard to marketing?</p>

<p style="text-align: right;">Page 121</p> <p>1 A. Early on that was the expectations.</p> <p>2 Q. Okay. And we're just talking about early</p> <p>3 on. I know there were changes made, and I -- and</p> <p>4 we'll -- promise you, we're going to -- we're going</p> <p>5 to work our way through them. But I'm just really</p> <p>6 dealing with the -- the initial -- establishing the</p> <p>7 relationships the way things were in the beginning.</p> <p>8 Okay?</p> <p>9 A. Okay.</p> <p>10 Q. With regard to application processing,</p> <p>11 well, this -- this relates to the decision engine</p> <p>12 that we talked about before; am I right?</p> <p>13 A. So, actually, I would say the decision</p> <p>14 engine piece would be one below. Application</p> <p>15 processing is --</p> <p>16 Q. Okay. That's the website?</p> <p>17 A. Yes.</p> <p>18 Q. And Think Finance was telling the tribe:</p> <p>19 We can -- we'll put together the website for you,</p> <p>20 right?</p> <p>21 A. So, actually, let me back up just real</p> <p>22 quick. So, yes, so the application processing piece</p> <p>23 would be -- you're right. I was getting confused</p> <p>24 here. It would be on the -- what the tribes wanted</p> <p>25 for the look and feel of the site, what kind of</p>	<p style="text-align: right;">Page 123</p> <p>1 interesting things about the Chippewa Cree tribe</p> <p>2 that we felt that they were a good partner for was</p> <p>3 they actually had an established lending operation</p> <p>4 already set up through another third-party servicer.</p> <p>5 BY MR. ACKELSBURG:</p> <p>6 Q. Meaning Encore?</p> <p>7 A. I believe that was the partner that they</p> <p>8 had.</p> <p>9 Q. Well, had they ever made a loan with</p> <p>10 Encore?</p> <p>11 A. Have I ever made?</p> <p>12 Q. No. Had the tribe ever made a loan with</p> <p>13 Encore?</p> <p>14 A. It was my understanding that they had an</p> <p>15 established platform, established site, and a</p> <p>16 portfolio that was there.</p> <p>17 Q. That wasn't my question. My question was</p> <p>18 whether they were actually making loans on that</p> <p>19 platform?</p> <p>20 MR. SCHEFF: Object to the form; asked</p> <p>21 and answered.</p> <p>22 You can answer again.</p> <p>23 A. That was my complete understanding.</p> <p>24 BY MR. ACKELSBURG:</p> <p>25 Q. That you thought they were making loans?</p>
<p style="text-align: right;">Page 122</p> <p>1 creative, what kind of verbiage they wanted out</p> <p>2 there, and also any kind of communications with the</p> <p>3 customer before the application process was</p> <p>4 completed.</p> <p>5 Q. And then under "Underwriting Criteria,"</p> <p>6 then that's -- that's the decision engine, right?</p> <p>7 A. So here what would be requested -- required</p> <p>8 of the tribes would be that they would have to</p> <p>9 approve up front any kind of underwriting criteria,</p> <p>10 whether that's knockout rules, score cuts that --</p> <p>11 that they would set. And then on a go-forward basis</p> <p>12 any kind of modifications that needed to be made had</p> <p>13 to be approved and -- reviewed and approved by the</p> <p>14 tribe, and then there would also be ongoing</p> <p>15 reporting on how the portfolio performed that they</p> <p>16 would be expected to -- to review to make sure they</p> <p>17 understand the portfolio is performing.</p> <p>18 Q. Now, I mean, when you went to the Chippewa</p> <p>19 Cree, I mean, they didn't have any -- they didn't</p> <p>20 have any experience running a loan operation like</p> <p>21 you were -- like you were -- like you were offering</p> <p>22 to set up for them, had they?</p> <p>23 MR. GATEWOOD: Objection; form.</p> <p>24 MR. SCHEFF: Object to the form.</p> <p>25 A. Sure. I mean, actually, one of the</p>	<p style="text-align: right;">Page 124</p> <p>1 A. (Nods head affirmatively.)</p> <p>2 Q. Okay. And so in terms of the -- the role</p> <p>3 of the tribe with regard to underwriting, the tribe</p> <p>4 had to -- the tribe had to approve any -- the</p> <p>5 development of the -- the decision engine required</p> <p>6 certain parameters that the tribe would have to --</p> <p>7 would have to agree to, right? They would have to</p> <p>8 approve certain -- whatever the particular</p> <p>9 underwriting criteria were of the platform that was</p> <p>10 set up, right?</p> <p>11 A. The tribe would have to approve anything</p> <p>12 that into the -- the underwriting.</p> <p>13 Q. Right. So Think Finance would have to</p> <p>14 develop something in order to -- there would have to</p> <p>15 then be someone saying: Yes, I approve that.</p> <p>16 Right? That's -- that's what the tribal role would</p> <p>17 be, to approve what Think Finance put in front of</p> <p>18 them, right?</p> <p>19 MR. GATEWOOD: Objection; form.</p> <p>20 A. My understanding was, and the way it</p> <p>21 actually took place, was not that they just approve</p> <p>22 anything that was sent over to them. They -- they</p> <p>23 would have to review any kind of changes that were</p> <p>24 being proposed, understand the impacts that it would</p> <p>25 have to the portfolio. And since they did own a</p>

<p style="text-align: right;">Page 125</p> <p>1 piece of the portfolio, that they -- you know, they</p> <p>2 wanted to make sure that it was a prudent decision.</p> <p>3 So they -- they were the ones that had to review and</p> <p>4 approve and make any suggested modifications back to</p> <p>5 us --</p> <p>6 BY MR. ACKELSBURG:</p> <p>7 Q. And your --</p> <p>8 A. -- on anything.</p> <p>9 Q. And your sense was that the tribe really</p> <p>10 understood all that and they understood -- when you</p> <p>11 sent loan criteria, they understood that? I mean,</p> <p>12 were you involved in that?</p> <p>13 MR. GATEWOOD: Objection; form.</p> <p>14 A. So most of the -- from a -- an underwriting</p> <p>15 standpoint, a lot of that conversation came from our</p> <p>16 risk department with -- with the partners. But I</p> <p>17 reviewed some of the documentation that was sent --</p> <p>18 you know, not every documentation but -- but how</p> <p>19 that structure was put together, and I thought they</p> <p>20 were very thorough on what the -- the changes were</p> <p>21 being proposed for, what the impact would be so that</p> <p>22 the tribe could really understand what was going on</p> <p>23 and ask the questions they needed to ask to get</p> <p>24 comfortable.</p> <p>25 BY MR. ACKELSBURG:</p>	<p style="text-align: right;">Page 127</p> <p>1 right?</p> <p>2 MR. SCHEFF: Objection; asked and</p> <p>3 answered.</p> <p>4 You can answer it again.</p> <p>5 BY MR. ACKELSBURG:</p> <p>6 Q. That's -- right?</p> <p>7 A. So I would say you see many lenders out</p> <p>8 there partner with ad agencies, creative agencies to</p> <p>9 do marketing for them on behalf of their products.</p> <p>10 And so this is --</p> <p>11 Q. Understood.</p> <p>12 A. And so, just -- just as you see as in many</p> <p>13 other industries, the tribe contracted with</p> <p>14 telemarketing to do that -- that marketing, but they</p> <p>15 had to be involved with every piece of communication</p> <p>16 and creative to make sure it met their criteria.</p> <p>17 Q. I understand. And they contract with Think</p> <p>18 Finance to -- to operate the website and decision</p> <p>19 engine?</p> <p>20 A. So, I mean, once again, on the website</p> <p>21 creative, there was -- there was work done with the</p> <p>22 tribes on how to propose what that look and feel,</p> <p>23 what that language would be that the tribes had</p> <p>24 input on. Any kind of verbiage that was out there,</p> <p>25 it had to be approved upon. And then the same thing</p>
<p style="text-align: right;">Page 126</p> <p>1 Q. What about under "Funding and Payment</p> <p>2 Processing," that was, basically, all done by Think</p> <p>3 Finance, wasn't it?</p> <p>4 MR. GATEWOOD: Objection; form.</p> <p>5 MR. SCHEFF: Object to the form.</p> <p>6 A. So under "Funding and Payment Processing,"</p> <p>7 as -- as part of the system, the system would cue up</p> <p>8 what -- what loans needed to be funded that night,</p> <p>9 what loans needed to take payments out of.</p> <p>10 BY MR. ACKELSBURG:</p> <p>11 Q. Whose system?</p> <p>12 A. The loan management system that was</p> <p>13 licensed by the tribe. So based on loans that they</p> <p>14 had originated, the system would cue up any kind of</p> <p>15 outgoing credits or incoming debits, but those</p> <p>16 were -- would all be going into a tribal account</p> <p>17 that they owned.</p> <p>18 Q. That would all be managed by Think Finance,</p> <p>19 right?</p> <p>20 A. That was the tribe's product that they</p> <p>21 were -- I don't understand what you're saying.</p> <p>22 Q. Well, I'm just trying to understand who's</p> <p>23 doing what here. So let's go to the top -- from the</p> <p>24 top. The tribe -- the marketing is done by Think,</p> <p>25 but the tribe has to approve it before it goes out,</p>	<p style="text-align: right;">Page 128</p> <p>1 with the underwriting criteria, as I mentioned</p> <p>2 earlier, that was something that it was their</p> <p>3 underwriting criteria, they -- they set that</p> <p>4 criterion up front when the program was established.</p> <p>5 Any changes that were proposed, they approved or</p> <p>6 made modifications to.</p> <p>7 And the other thing they had -- they had</p> <p>8 access to was at the end of the day, the -- the</p> <p>9 decision engine that underwrote the loans based on</p> <p>10 their criteria, it would say these are the loans</p> <p>11 that met your criteria and these are the loans that</p> <p>12 did not meet your criteria and so it had to be</p> <p>13 declined, and they had the ability to go in and</p> <p>14 review any and all of those to audit and sample and</p> <p>15 make sure it met their criteria.</p> <p>16 Q. Well, they had the ability, but they</p> <p>17 didn't -- they didn't really have to do it in order</p> <p>18 for the loans to be either approved or denied,</p> <p>19 right?</p> <p>20 MR. SCHEFF: Object to the form.</p> <p>21 MR. GATEWOOD: Objection; form.</p> <p>22 A. So to me, that's -- that's what I would</p> <p>23 call a belts and suspenders approach. They had</p> <p>24 already set up the criteria up front. They had</p> <p>25 already made approvals on any changes that were made</p>

<p style="text-align: right;">Page 157</p> <p>1 identify these -- these agreements. Okay?</p> <p>2 So we'll start with -- we'll start with</p> <p>3 Plain Green. So I am going to mark as P-128 the</p> <p>4 marketing agreement dated March 18, 2011, between</p> <p>5 Plain Green, LLC, and TailWind Marketing. 129 is an</p> <p>6 agreement entitled "License and Support Agreement"</p> <p>7 with the same date, March 18, 2011, between Plain</p> <p>8 Green, LLC, and TC Decision Sciences. And then 130</p> <p>9 is an agreement named "Servicing Agreement," same</p> <p>10 date, March 18, 2011, between Plain Green, LLC, and</p> <p>11 TC Decision Sciences.</p> <p>12 And I am going to show you a fourth</p> <p>13 agreement dated, again, the same date, March 18,</p> <p>14 2011. This one is between Plain Green, LLC, and GPL</p> <p>15 Servicing Limited, and it's entitled "Participation</p> <p>16 Agreement (Plain Green)."</p> <p>17 (Exhibit Nos. 128 - 131 marked.)</p> <p>18 BY MR. ACKELSBURG:</p> <p>19 Q. So my question is -- is simply whether you</p> <p>20 agree these four agreements are, in fact, the</p> <p>21 agreements that established the initial relationship</p> <p>22 underlying the Plain Green product?</p> <p>23 MR. SCHEFF: Object to the form.</p> <p>24 A. These look like the four documents that</p> <p>25 established the program.</p>	<p style="text-align: right;">Page 159</p> <p>1 BY MR. ACKELSBURG:</p> <p>2 Q. -- during each calendar month? Do you see</p> <p>3 the --</p> <p>4 MR. SCHEFF: Object to the form. The</p> <p>5 document speaks for itself.</p> <p>6 You can answer if you can.</p> <p>7 BY MR. ACKELSBURG:</p> <p>8 Q. Look on page 2, in case you're wanting to</p> <p>9 reference --</p> <p>10 MR. SCHEFF: Refer to as much of the</p> <p>11 agreement as you think you need to.</p> <p>12 BY MR. ACKELSBURG:</p> <p>13 Q. Definition, Section 1(g), do you see that?</p> <p>14 A. I do.</p> <p>15 Q. Okay. Do you recall that Think was</p> <p>16 agreeing to pay -- or was agreeing to have GPLS pay</p> <p>17 a 1 percent fee to Haynes Investments every month</p> <p>18 going forward?</p> <p>19 MR. GATEWOOD: Objection; form.</p> <p>20 BY MR. ACKELSBURG:</p> <p>21 Q. Do you remember that?</p> <p>22 A. I do remember there being a consulting fee</p> <p>23 set up to be paid to GPLS.</p> <p>24 Q. And what was your understanding of this?</p> <p>25 Was this -- this was going to go on -- at the time,</p>
<p style="text-align: right;">Page 158</p> <p>1 MR. ACKELSBURG: Okay. And I want to</p> <p>2 show you one additional agreement regarding Plain</p> <p>3 Green. This is Plaintiff's Exhibit 132. Same date,</p> <p>4 March 18, 2011. And this is an agreement between</p> <p>5 Haynes Investments and TC Administrative Services.</p> <p>6 (Exhibit No. 132 marked.)</p> <p>7 BY MR. ACKELSBURG:</p> <p>8 Q. Now, TC Administrative Services, we haven't</p> <p>9 mentioned that previously today among the Think</p> <p>10 Finance affiliates. What was your understanding of</p> <p>11 the role that TC Administrative Services played in</p> <p>12 this?</p> <p>13 A. You know, I can't remember the specific</p> <p>14 role for TCAS as it was set up in this arrangement.</p> <p>15 Q. Okay. Now, it looks like this is an</p> <p>16 agreement that -- that TCAS -- that's all caps,</p> <p>17 TCAS, that's what -- that's how you refer to</p> <p>18 TC Administrative Services?</p> <p>19 A. Yes.</p> <p>20 Q. Okay. And am I right that under this</p> <p>21 agreement, TC Administrative Services is agreeing to</p> <p>22 pay to Haynes Investments a fee called a consulting</p> <p>23 fee equal to 1 percent of the cash revenue received</p> <p>24 by GPLS --</p> <p>25 MR. GATEWOOD: Objection; form.</p>	<p style="text-align: right;">Page 160</p> <p>1 it was going to go on into the future? Every month</p> <p>2 Haynes was going to get 1 percent of the revenue?</p> <p>3 MR. SCHEFF: Object to the form;</p> <p>4 compound question.</p> <p>5 BY MR. ACKELSBURG:</p> <p>6 Q. Was that your understanding?</p> <p>7 MR. SCHEFF: Object to the form.</p> <p>8 A. This is the part of this agreement with --</p> <p>9 with Steve, for him making the introduction, he was</p> <p>10 going to get this consulting fee for -- if I</p> <p>11 remember correctly, there was not a termination date</p> <p>12 on the agreement. So. . .</p> <p>13 BY MR. ACKELSBURG:</p> <p>14 Q. And when did -- when did you first learn</p> <p>15 that -- when did Haynes first ask for a fee of</p> <p>16 this -- a 1 percent fee going forward? When did</p> <p>17 that come up in your conversation?</p> <p>18 MR. GATEWOOD: Objection; form.</p> <p>19 A. So my recollection was that was part of the</p> <p>20 conversations as we were mak- -- as he -- just</p> <p>21 before or as he was making the introductions to</p> <p>22 tribes, that we would pay him a 1 percent fee for</p> <p>23 any -- any introduction that turned into a</p> <p>24 partnership with a -- with a tribe.</p> <p>25 BY MR. ACKELSBURG:</p>

<p style="text-align: right;">Page 161</p> <p>1 Q. And was Haynes -- was the intent of this</p> <p>2 agreement that -- or the expectation -- strike that.</p> <p>3 Was the expectation of Think underlying</p> <p>4 this agreement that Haynes would provide any</p> <p>5 services in the future other -- well, they would</p> <p>6 provide any services in the future --</p> <p>7 MR. GATEWOOD: Objection; form.</p> <p>8 BY MR. ACKELSBURG:</p> <p>9 Q. -- in return for this 1 percent fee?</p> <p>10 A. Sure. My recollection was there was an</p> <p>11 understanding of, one, that he would also make</p> <p>12 additional introductions to other potential tribal</p> <p>13 partners in Indian country. And as -- as regards to</p> <p>14 working with Plain Green, he had already had an</p> <p>15 established relationship with the Chippewa Cree</p> <p>16 tribe and had done a handful of transactions there</p> <p>17 on the reservation and was going to work with -- was</p> <p>18 to help, this being our first venture with</p> <p>19 partnering with a tribe, on any kind of, I don't</p> <p>20 know, how to best optimize that relationship and</p> <p>21 make sure that -- that we could make it run as</p> <p>22 smoothly as possible.</p> <p>23 Q. Do you know specifically what his prior</p> <p>24 business relationship was with the tribe?</p> <p>25 A. My understanding was he helped finance the</p>	<p style="text-align: right;">Page 163</p> <p>1 134, 135 and 136 are the four agreements that</p> <p>2 established the initial relationship between Think</p> <p>3 Finance and the Otoe-Missouria tribe regarding the</p> <p>4 Great Plains Lending product?</p> <p>5 MR. SHAPIRO: Objection; form.</p> <p>6 A. These look like the four key documents that</p> <p>7 set up the relationship with Great Plains Lending.</p> <p>8 BY MR. ACKELSBURG:</p> <p>9 Q. Okay. Now, I didn't see any similar</p> <p>10 referral agreement with Great Plains Lending. Did</p> <p>11 MacFarlane get any kind of a finder's fee like --</p> <p>12 like Haynes did?</p> <p>13 MR. GATEWOOD: Objection; form.</p> <p>14 A. My understanding is he didn't receive any</p> <p>15 kind of compensation from Think Finance as a</p> <p>16 finder's fee for that relationship. So I don't</p> <p>17 think there was ever a document signed for that.</p> <p>18 BY MR. ACKELSBURG:</p> <p>19 Q. Was it your understanding that he was being</p> <p>20 compensated by the tribe instead?</p> <p>21 MR. SCHEFF: Object to the form.</p> <p>22 A. I did -- my understanding was that there</p> <p>23 was some sort of compensation from the tribe to him</p> <p>24 for that partnership.</p> <p>25 BY MR. ACKELSBURG:</p>
<p style="text-align: right;">Page 162</p> <p>1 slot machines for the casinos, is what I remember.</p> <p>2 Q. All right. What I would like to do now is</p> <p>3 just to go through the same set of agreements -- the</p> <p>4 same corresponding set of agreements on the GPL --</p> <p>5 on the Great Plains Lending side. Okay?</p> <p>6 A. Okay.</p> <p>7 MR. ACKELSBURG: And then we'll</p> <p>8 starting -- starting with -- so 134 -- we'll do 133,</p> <p>9 134, and 135. So Plaintiff's Exhibit P-134 will be</p> <p>10 the marketing agreement between TailWind Marketing</p> <p>11 and Great Plains Lending, LLC, dated May 25, 2011.</p> <p>12 Exhibit P-133 is the license and support agreement,</p> <p>13 same date, May 25, 2011, between Great Plains</p> <p>14 Lending, LLC, and TC Decision Sciences. And Exhibit</p> <p>15 P-135, same date, the agreement is entitled</p> <p>16 "Servicing Agreement" between Great Plains Lending,</p> <p>17 LLC, and TC Decision Sciences. Oh, and, finally,</p> <p>18 the participation agreement for Great Plains</p> <p>19 Lending, which is 136. Now, this does not have a</p> <p>20 date filled in. It does have a signature of the --</p> <p>21 of the tribe. It's TF-PA 244514.</p> <p>22 (Exhibit Nos. 133 - 136 marked.)</p> <p>23 BY MR. ACKELSBURG:</p> <p>24 Q. And am I correct that these four agreements</p> <p>25 that have been identified as Exhibits 134 -- 133,</p>	<p style="text-align: right;">Page 164</p> <p>1 Q. Okay. So some portion -- as far as -- as</p> <p>2 far as your understanding goes, that some -- some of</p> <p>3 the revenues that the tribe would receive from the</p> <p>4 Great Plains Lending product would -- would go --</p> <p>5 they would pay some portion of that to MacFarlane</p> <p>6 for his services to them?</p> <p>7 MR. SCHEFF: Object to the form.</p> <p>8 BY MR. ACKELSBURG:</p> <p>9 Q. And I say "his." Its service. But we're</p> <p>10 talking about Mark Curry, basically, right?</p> <p>11 MR. SCHEFF: Object to the form.</p> <p>12 A. So I never saw any kind of documentation on</p> <p>13 what the transaction was or what the fee was being</p> <p>14 paid for. I just had an understanding that there</p> <p>15 was compensation. I don't know if it was for the --</p> <p>16 what services it was -- what he was being</p> <p>17 compensated for.</p> <p>18 BY MR. ACKELSBURG:</p> <p>19 Q. And did you have any understanding or</p> <p>20 belief regarding a similar relationship between the</p> <p>21 Chippewa Cree and Encore Services?</p> <p>22 MR. SCHEFF: Object to the form.</p> <p>23 A. Going into the transaction, I didn't know</p> <p>24 that there was anything like that taking place.</p> <p>25 Through the course of the relationship, I did come</p>

<p style="text-align: right;">Page 165</p> <p>1 to understand that there was some sort of consulting</p> <p>2 fee being paid back to Encore.</p> <p>3 BY MR. ACKELSBURG:</p> <p>4 Q. A fairly substantial one, correct?</p> <p>5 A. I never saw what the numbers were.</p> <p>6 Q. You didn't hear the -- what are the</p> <p>7 numbers? You say "saw." I mean, I'm not asking</p> <p>8 whether you saw a document, but what -- did you come</p> <p>9 to learn the amount of Plain Green revenues that was</p> <p>10 being paid over to Encore?</p> <p>11 A. I mean, I never knew the exact fee or --</p> <p>12 through any means. I knew there was a fee being</p> <p>13 paid, but I -- I didn't know what it was.</p> <p>14 Q. Well, it doesn't have to be exact. What do</p> <p>15 you remember, if you -- if you remember anything?</p> <p>16 A. I'd be guessing at this point to say.</p> <p>17 Q. Okay. All right. Now, there was a third</p> <p>18 tribal contract with the Tunica tribe in Louisiana,</p> <p>19 correct?</p> <p>20 A. Yes, it was the Tunica-Biloxi.</p> <p>21 Q. Tunica-Biloxi tribe. And this -- and this</p> <p>22 is -- and those -- and that relationship concerned</p> <p>23 the line of credit product called Mobiloans,</p> <p>24 correct?</p> <p>25 A. That's correct.</p>	<p style="text-align: right;">Page 167</p> <p>1 and the type of products that we could design if</p> <p>2 they had an interest.</p> <p>3 Q. And also there were the face-to-face -- was</p> <p>4 there a face-to-face sales meeting on the</p> <p>5 reservation?</p> <p>6 MR. SCHEFF: Object to the form.</p> <p>7 A. Yes, we met with their tribal council and</p> <p>8 with their -- I think it was their business board.</p> <p>9 BY MR. ACKELSBURG:</p> <p>10 Q. And when you say "we," who was there</p> <p>11 besides you?</p> <p>12 A. I believe that was myself. And I can't</p> <p>13 remember if that was -- a lady that worked on my</p> <p>14 team, either Kerry Miles or Michelle Nguyen were one</p> <p>15 of the two with me. And then, I believe, Steve</p> <p>16 Schafer was there with me as well.</p> <p>17 Q. Okay. And is Exhibit P-138 the term sheet</p> <p>18 that was, in fact, executed between the parties?</p> <p>19 A. It looks like to be that document.</p> <p>20 MR. SHAPIRO: Object to form.</p> <p>21 BY MR. ACKELSBURG:</p> <p>22 Q. And were there -- for the -- for the</p> <p>23 Mobiloans product, was there also a marketing</p> <p>24 agreement, a license and support agreement, a</p> <p>25 servicing agreement and a participation agreement</p>
<p style="text-align: right;">Page 166</p> <p>1 MR. ACKELSBURG: All right. We are</p> <p>2 going to skip a -- skip a number. The next document</p> <p>3 is going to be Exhibit P-138.</p> <p>4 (Exhibit No. 138 marked.)</p> <p>5 BY MR. ACKELSBURG:</p> <p>6 Q. Now, with regard to the Tunica-Biloxi</p> <p>7 tribe, was there also a matchmaker here similar to</p> <p>8 the role played by Haynes and Mark Curry?</p> <p>9 MR. SCHEFF: Object to the form.</p> <p>10 A. So there was an introduction made to the</p> <p>11 Tunica-Biloxi tribe through RLJ Financial.</p> <p>12 BY MR. ACKELSBURG:</p> <p>13 Q. And by RLJ Financial, we're talking about,</p> <p>14 also, board member, Robert Johnson?</p> <p>15 A. Bob Johnson was -- I don't know if he was</p> <p>16 the sole owner of RLJ Financial, but he was a part</p> <p>17 owner there, for sure.</p> <p>18 Q. So Bob Johnson made the connection between</p> <p>19 Think and the Tunica-Biloxi, correct?</p> <p>20 A. That's correct.</p> <p>21 Q. And the result of that connection was there</p> <p>22 were meetings like you had with the Otoe-Missouria</p> <p>23 and the Chippewa Cree?</p> <p>24 A. There were -- there were introduction</p> <p>25 meetings to introduce them to who Think Finance was</p>	<p style="text-align: right;">Page 168</p> <p>1 like we have looked at with regard to the other two</p> <p>2 tribes?</p> <p>3 MR. GATEWOOD: Objection; form.</p> <p>4 A. My recollection is that we had those</p> <p>5 similar four documents.</p> <p>6 BY MR. ACKELSBURG:</p> <p>7 Q. Okay. Now, the Plain Green and Great</p> <p>8 Plains Lending, those were installment loan</p> <p>9 products, right?</p> <p>10 A. They were installment loans, yes.</p> <p>11 Q. And the Mobiloans was line of credit?</p> <p>12 A. That's correct.</p> <p>13 Q. Now, the two installment loan products,</p> <p>14 were they operated on the Think side on the same</p> <p>15 loan platform?</p> <p>16 MR. SCHEFF: Object to the form.</p> <p>17 MR. GATEWOOD: Objection; form.</p> <p>18 A. My recollection was they were within the</p> <p>19 same -- we had a loan management system that could</p> <p>20 be separated for multiple parties to use it.</p> <p>21 BY MR. ACKELSBURG:</p> <p>22 Q. And what -- how did you refer to that</p> <p>23 platform? What's the generic name for that platform</p> <p>24 that was modified to serve different -- the two</p> <p>25 different installment loan customers?</p>

<p style="text-align: right;">Page 181</p> <p>1 A. So the way I remember it is when the call 2 center on the Chippewa Cree was built, it's like any 3 new operations for -- for any entity, there's 4 growing pains on getting something off the ground 5 and launched, getting the staff hired up, beginning 6 to scale it. And so as that was first launched and 7 bringing the staff on board and getting them trained 8 up, it took -- it took time and effort to partner 9 with the tribe to make sure that they could get the 10 quality employees that they were looking for. 11 Q. Because they didn't have a call center 12 before, right? 13 A. When we -- when we began working with them 14 they had -- what I remember is they had people 15 taking calls for their existing portfolio, but it 16 wasn't in a -- in a setup that could be scaled to 17 support, call it, a 50 seat call center. And so the 18 idea was to help -- help them build something that 19 they could go into that so they could scale much 20 more beyond what they had. 21 Q. So let's just talk very briefly about the 22 specific role of the call center that was located in 23 the Chippewa Cree reservation. Am I right that the 24 role they played was verifications? 25 A. So initially they were set up to handle</p>	<p style="text-align: right;">Page 183</p> <p>1 itself, right? 2 MR. SCHEFF: Object to the form; 3 misstates the testimony. 4 You can answer the question if you can. 5 A. So, yes, so applications go through the 6 decision engine, and based on their criteria, 7 some -- 8 BY MR. ACKELSBURG: 9 Q. Okay. 10 A. -- some are approved and some are out 11 sorted for additional. . . 12 Q. Right. Okay. So this is part of what 13 the -- the engine does, is it keeps sorting out the 14 applications based on various criteria, correct? 15 MR. SCHEFF: Object to the form; 16 misstates the testimony. 17 You can answer the question if you can. 18 A. So, yeah, it separated to me one to three 19 buckets, either to approved, need more information 20 or declined. 21 BY MR. ACKELSBURG: 22 Q. Okay. So with the approved bucket, the 23 call center doesn't have to do anything, right? 24 A. That's correct. 25 Q. And, in fact, no one at the tribe has to do</p>
<p style="text-align: right;">Page 182</p> <p>1 verification work. So when a loan was approved, it 2 would go through their underwriting, meet their 3 criteria, and it would be approved. It would also 4 go through an automated verification set of rules 5 that they had preapproved. And if there was 6 additional information that was needed to validate 7 that identity, then they were able to work -- you 8 know, maybe somebody had to fax in a driver's 9 license or a pay stub or something like that, they 10 were able to manage those calls. 11 Q. So this was entirely calls on the front end 12 regarding the application process, right? 13 A. Initially, they took calls on the front end 14 on the application process. Over time, as it 15 evolved, I believe they were also taking customer 16 service calls as well. 17 Q. All right. So let's just -- let's just 18 deal with the early period first. So some -- some 19 loans are approved automatically. Right? 20 MR. SCHEFF: Object to the form. 21 BY MR. ACKELSBURG: 22 Q. I know pursuant to -- pursuant to criteria 23 preapproved by the tribe. I understand that part. 24 But I'm just trying to look at the operational side. 25 So some -- some loans are approved by the engine</p>	<p style="text-align: right;">Page 184</p> <p>1 anything for that bucket, right? 2 MR. SCHEFF: Object to the form; 3 misstates the testimony. 4 You can answer the question if you can. 5 BY MR. ACKELSBURG: 6 Q. With regard to a specific loan application 7 that is approved by the engine, the tribe, with 8 regard to that application, doesn't have to do 9 anything, do they? 10 MR. SCHEFF: Object to the form; 11 misstates the testimony. 12 You can answer the question if you can. 13 A. Other than the approval they've already 14 done to outline the criteria for it to be approved 15 and the ability to go in later that day to audit to 16 make sure it meets the criteria, there's nothing 17 else that needs to be done. 18 BY MR. ACKELSBURG: 19 Q. Okay. But then there's the second bucket, 20 and that's the verification bucket. And with regard 21 to the verifications, some portion of the 22 verifications work was done in the early -- well, 23 let's say when -- in April of 2011, when the -- when 24 Plain Green went online, there was no call center at 25 that point, right, at -- on the -- on the</p>

<p style="text-align: right;">Page 185</p> <p>1 reservation.</p> <p>2 A. That's correct.</p> <p>3 Q. Okay. So at some point, between April of</p> <p>4 2011 and September of 2011, when Mr. Rees is</p> <p>5 reporting to the board, there was a -- there was a</p> <p>6 call center established, it was built and staffed on</p> <p>7 the -- on the tribal lands, correct?</p> <p>8 A. That's correct.</p> <p>9 Q. Okay. Now, even when that -- when that</p> <p>10 went operational, some of the -- the verifications</p> <p>11 work was being done by outside vendors, right?</p> <p>12 MR. SCHEFF: Object to the form.</p> <p>13 You can answer the question.</p> <p>14 A. So my memory on it was that similar to --</p> <p>15 well, sorry, scratch that.</p> <p>16 My memory was that the -- the call center</p> <p>17 there was set up to take the first set of -- the</p> <p>18 first amount of capacity that was coming in. So if</p> <p>19 you had a large volume day, they were staffed up.</p> <p>20 They would take as much volume as they can handle</p> <p>21 for verification. The overflow would go to a third</p> <p>22 party that they signed a contract with to manage</p> <p>23 verifications and customer service work beyond their</p> <p>24 capacity.</p> <p>25 BY MR. ACKELSBURG:</p>	<p style="text-align: right;">Page 187</p> <p>1 servicing -- licensing and servicing contract?</p> <p>2 A. Correct.</p> <p>3 MR. GATEWOOD: Objection; form.</p> <p>4 MR. SCHEFF: Object to the form.</p> <p>5 A. That's my understanding, yes.</p> <p>6 BY MR. ACKELSBURG:</p> <p>7 Q. Yes. Okay. And, now, with regard to --</p> <p>8 there, also, is a part of the operation that, I</p> <p>9 guess, is called collections, where you have to</p> <p>10 contact borrowers that aren't paying. Right?</p> <p>11 MR. GATEWOOD: Objection; form.</p> <p>12 A. Yes, once a -- if a customer does not pay,</p> <p>13 then it roles into a delinquent -- delinquency</p> <p>14 status, and collection efforts are pursued.</p> <p>15 BY MR. ACKELSBURG:</p> <p>16 Q. And am I -- am I correct that those -- and</p> <p>17 that that work, the collections work would be done</p> <p>18 by outside collection companies?</p> <p>19 A. So Plain Green would contract with a third</p> <p>20 party to do collections on their behalf.</p> <p>21 Q. So the answer is, "yes," right, their --</p> <p>22 MR. SCHEFF: The answer to what is</p> <p>23 yes?</p> <p>24 BY MR. ACKELSBURG:</p> <p>25 Q. The work would be done by outside vendors,</p>
<p style="text-align: right;">Page 186</p> <p>1 Q. And it went -- and those vendors were --</p> <p>2 like, for example, I think MetaSource was one of</p> <p>3 those vendors?</p> <p>4 A. MetaSource was one, yes.</p> <p>5 Q. Located in -- where is MetaSource located?</p> <p>6 A. Salt Lake City, Utah.</p> <p>7 Q. Okay. And who established the system</p> <p>8 that -- that such that the calls -- the overflow</p> <p>9 calls could be routed from Montana to Meta in Salt</p> <p>10 Lake City?</p> <p>11 MR. SCHEFF: Object to the form.</p> <p>12 A. Sure. So as in conversations with Plain</p> <p>13 Green, the calls were going through -- as part of</p> <p>14 the technology they had licensed from us -- we have</p> <p>15 a technology -- or a telephone platform, so when a</p> <p>16 call comes in, they can be first routed to their</p> <p>17 call center, and any overflow would be routed to</p> <p>18 their backup call center.</p> <p>19 BY MR. ACKELSBURG:</p> <p>20 Q. So this telephone platform, is that</p> <p>21 different than the loan platform? Is that a -- is</p> <p>22 that a different platform?</p> <p>23 A. It is different.</p> <p>24 Q. Okay. So that's part of the Think Finance</p> <p>25 platform that -- that was licensed through the TCDS</p>	<p style="text-align: right;">Page 188</p> <p>1 right?</p> <p>2 MR. SCHEFF: Object to the form.</p> <p>3 You can answer the question again.</p> <p>4 A. So, yes, Plain Green contracted with third</p> <p>5 parties to collect on their behalf.</p> <p>6 BY MR. ACKELSBURG:</p> <p>7 Q. And Think Finance would guarantee Plain</p> <p>8 Green's payments to those vendors; am I also</p> <p>9 correct?</p> <p>10 MR. SCHEFF: Object to the form.</p> <p>11 A. From my -- what I remember in the early</p> <p>12 days, to get -- to get the partners comfortable with</p> <p>13 signing a contract with a tribal entity, Think</p> <p>14 Finance would -- would do that.</p> <p>15 BY MR. ACKELSBURG:</p> <p>16 Q. And how long did those early days last,</p> <p>17 that Think provided a guarantee to the collection</p> <p>18 vendors?</p> <p>19 MR. GATEWOOD: Objection; form.</p> <p>20 A. I don't remember the day when that -- that</p> <p>21 ceased.</p> <p>22 BY MR. ACKELSBURG:</p> <p>23 Q. I mean, are we talking about a month? Are</p> <p>24 we talking about a couple years? What --</p> <p>25 MR. SCHEFF: Objection; asked and</p>

<p style="text-align: right;">Page 189</p> <p>1 answered.</p> <p>2 You can answer the question again.</p> <p>3 MR. GATEWOOD: Objection; form.</p> <p>4 A. I'd -- I'd be guessing. Longer than a</p> <p>5 month.</p> <p>6 BY MR. ACKELSBURG:</p> <p>7 Q. Now, other than -- as of, let's say this</p> <p>8 date, September 2011, was there any activity</p> <p>9 regarding the day-to-day operations of the Plain</p> <p>10 Green product that was located -- that occurred on</p> <p>11 tribal lands other than the people sitting in the</p> <p>12 verification call center?</p> <p>13 MR. GATEWOOD: Objection; form.</p> <p>14 MR. SCHEFF: Object to the form.</p> <p>15 A. So they had -- the Plain Green management</p> <p>16 team was based there on the reservation. So they --</p> <p>17 from what I remember, they had, you know, either a</p> <p>18 president or a GM, they had a compliance officer.</p> <p>19 They had somebody managing the accounting and also</p> <p>20 some of the -- the reviews of all the documentation</p> <p>21 coming through. So they had a staff -- I think they</p> <p>22 had a core staff of probably -- of the management</p> <p>23 team of, call it, six people, plus the call center</p> <p>24 staff.</p> <p>25 BY MR. ACKELSBURG:</p>	<p style="text-align: right;">Page 191</p> <p>1 having weekly calls with their team on -- whether it</p> <p>2 was the operational side or was it on the product</p> <p>3 side on what they're seeing from a performance</p> <p>4 standpoint. When we would visit the tribe for our</p> <p>5 regular visits, they had board meetings with their</p> <p>6 Plain Green board that was looking at metrics and</p> <p>7 documentation they had put together. So everything</p> <p>8 that we saw, it appeared that they were managing</p> <p>9 that business from -- from the reservation.</p> <p>10 BY MR. ACKELSBURG:</p> <p>11 Q. And your sense was they were doing a</p> <p>12 thorough and competent job in doing that?</p> <p>13 MR. SCHEFF: Object to the form.</p> <p>14 MR. GATEWOOD: Objection; form.</p> <p>15 MR. SCHEFF: You can answer the</p> <p>16 question if you can.</p> <p>17 A. As I mentioned, they -- they had a board</p> <p>18 established. They had a management team together.</p> <p>19 They had regular meetings. They were looking at the</p> <p>20 right information.</p> <p>21 BY MR. ACKELSBURG:</p> <p>22 Q. I know, you mentioned that. But that</p> <p>23 wasn't what I asked you. I said was it your</p> <p>24 assessment --</p> <p>25 MR. SCHEFF: Irv, please let him</p>
<p style="text-align: right;">Page 190</p> <p>1 Q. Well, what did those six people actually do</p> <p>2 on a day-to-day basis?</p> <p>3 A. Well, as I just -- as I just mentioned,</p> <p>4 between -- on -- on the financial side or accounting</p> <p>5 side, there was somebody there looking at the -- the</p> <p>6 balances and the -- and the originations that were</p> <p>7 being created and keeping the books there. On the</p> <p>8 compliance side, they were able to go in and audit</p> <p>9 any kind of customer communications and review</p> <p>10 anything around that. And then, also, as the</p> <p>11 business is growing and maturing, they're looking at</p> <p>12 the numbers going throughout the day, week to week,</p> <p>13 month to month, to see the performance of -- of the</p> <p>14 program.</p> <p>15 Q. And did -- was it your sense back at the</p> <p>16 early days of the program that the tribe was, in</p> <p>17 fact, doing meaningful work with regard to the --</p> <p>18 I'm not talking about the call center. I'm just</p> <p>19 talking about those management people you were</p> <p>20 referring to do, that they were doing some</p> <p>21 meaningful work on a day-to-day basis regarding the</p> <p>22 operations of the program?</p> <p>23 MR. GATEWOOD: Objection; form.</p> <p>24 MR. SCHEFF: Object to the form.</p> <p>25 A. So my recollection was we -- my team was</p>	<p style="text-align: right;">Page 192</p> <p>1 finish his --</p> <p>2 BY MR. ACKELSBURG:</p> <p>3 Q. Was -- was it your assessment that they</p> <p>4 were --</p> <p>5 MR. SCHEFF: Irv. Irv.</p> <p>6 BY MR. ACKELSBURG:</p> <p>7 Q. -- doing a competent job?</p> <p>8 MR. SCHEFF: Do not cut him off. Let</p> <p>9 him finish his answer, please. Thank you.</p> <p>10 MR. ACKELSBURG: Are you finished?</p> <p>11 MR. SCHEFF: I am, so --</p> <p>12 MR. ACKELSBURG: Thank you.</p> <p>13 MR. SCHEFF: -- as long as you comply.</p> <p>14 Okay?</p> <p>15 BY MR. ACKELSBURG:</p> <p>16 Q. Now, please answer the question. Was it</p> <p>17 your assessment -- I know they had people with</p> <p>18 titles, but my question is whether the people with</p> <p>19 titles, in your assessment, were doing any</p> <p>20 meaningful and competent day-to-day management of</p> <p>21 the Plain Green product?</p> <p>22 MR. GATEWOOD: Objection; form.</p> <p>23 MR. SCHEFF: Object to the form.</p> <p>24 Answer the question again if you can.</p> <p>25 A. So as I mentioned, there was -- there</p>

<p>Page 225</p> <p>1 MoneyMutual is not -- will not accept the</p> <p>2 application, here is someone who might accept the</p> <p>3 application. That's, basically, what -- the</p> <p>4 way this worked, right?</p> <p>5 MR. GATEWOOD: Objection; form.</p> <p>6 A. So I don't -- I don't remember this</p> <p>7 campaign, specifically, but as I mentioned, what I</p> <p>8 remember is MoneyMutual having multiple different</p> <p>9 verticals that people could apply through. And so I</p> <p>10 don't know if this was through, as we talked about</p> <p>11 earlier, like, a single pay vertical that they</p> <p>12 couldn't find a match and were moving to an</p> <p>13 installment vertical, or if it was they try to get a</p> <p>14 few partners to underwrite and they couldn't approve</p> <p>15 them and sent back to MoneyMutual to find another</p> <p>16 lender. I'm just not sure exactly what this</p> <p>17 campaign was structured as.</p> <p>18 BY MR. ACKELSBURG:</p> <p>19 Q. And if look at the page -- the insertion</p> <p>20 order pages that are attached to the exhibit, PA-SS</p> <p>21 107 and 108, this is an insertion order that you</p> <p>22 signed, right?</p> <p>23 A. It is.</p> <p>24 Q. And this concerns a campaign called,</p> <p>25 "Mobiloans MoMu State Fails," right?</p>	<p>Page 227</p> <p>1 MR. ACKELSBURG: The witness isn't</p> <p>2 misled.</p> <p>3 MR. SCHEFF: -- together that are two</p> <p>4 years apart. That's outrageous.</p> <p>5 BY MR. ACKELSBURG:</p> <p>6 Q. So the first -- the first one we looked at</p> <p>7 was a -- was a campaign for Plain -- a proposed</p> <p>8 campaign for Plain Green to get no-stated</p> <p>9 MoneyMutual clients directed to Plain Green, right?</p> <p>10 That was the first one we looked at, right?</p> <p>11 MS. SCHEFF: Object to the form.</p> <p>12 A. That's correct.</p> <p>13 BY MR. ACKELSBURG:</p> <p>14 Q. Okay. The second one we looked at deals</p> <p>15 with no-states on MoneyMutual being directed to the</p> <p>16 Mobiloans site two years later, correct?</p> <p>17 MR. SCHEFF: Object to the form.</p> <p>18 A. So, I mean, I -- I agree that's what the</p> <p>19 documents are. I just -- when I look at these two</p> <p>20 together and then the third document that's -- I</p> <p>21 don't know that was even attached or can -- is part</p> <p>22 of the other two insertions, I don't know that they</p> <p>23 all relate together.</p> <p>24 BY MR. ACKELSBURG:</p> <p>25 Q. Well -- I understand. So let me -- let me</p>
<p>Page 226</p> <p>1 A. It does.</p> <p>2 Q. And so this is -- this is a campaign,</p> <p>3 correct me if I'm wrong, where -- where people who</p> <p>4 went on the Mobiloans -- the MoneyMutual site, where</p> <p>5 they were rejected because of the state that they</p> <p>6 resided in were directed to Mobiloans, right?</p> <p>7 MR. ACKELSBURG: Objection; form.</p> <p>8 MR. SCHEFF: Mr. Ackelsberg, you're</p> <p>9 not contenting that the document --</p> <p>10 MR. ACKELSBURG: No, no, no. No,</p> <p>11 these are diff- --</p> <p>12 MR. SCHEFF: You're not contending the</p> <p>13 document that starts PA-SS 00107 and 108 has</p> <p>14 anything to do with Think Finance Document 013478</p> <p>15 through 81, are you?</p> <p>16 BY MR. ACKELSBURG:</p> <p>17 Q. So -- so --</p> <p>18 MR. SCHEFF: Are you?</p> <p>19 BY MR. ACKELSBURG:</p> <p>20 Q. So, Mr. --</p> <p>21 MR. SCHEFF: Are you? Because they're</p> <p>22 two years apart.</p> <p>23 MR. ACKELSBURG: I'm aware of that.</p> <p>24 MR. SCHEFF: Okay. Well, then please</p> <p>25 don't mislead the witness. You put documents --</p>	<p>Page 228</p> <p>1 just ask you this: Do you agree that in 2011, 2012</p> <p>2 and 2013, customers applying on the MoneyMutual site</p> <p>3 or some other site of PartnerWeekly who were</p> <p>4 rejected on those sites because of their state,</p> <p>5 could have been redirected, possibly, to a Plain</p> <p>6 Green, to a Great Plains Lending or to a Mobiloans</p> <p>7 site depending on the particular insertion order</p> <p>8 campaign that was in effect at that point in time?</p> <p>9 MR. GATEWOOD: Objection; form.</p> <p>10 MR. SCHEFF: Object to the form.</p> <p>11 A. So, as I mentioned, there was different</p> <p>12 insertion orders to buy traffic from PartnerWeekly,</p> <p>13 and that -- that could have been one of them.</p> <p>14 BY MR. ACKELSBURG:</p> <p>15 Q. But -- and that included, specifically,</p> <p>16 people who were rejected because of what state they</p> <p>17 lived in on the MoneyMutual site, they were, by</p> <p>18 agreement, redirected to in some cases Plain Green,</p> <p>19 in some cases Great Plains Lending, and in some</p> <p>20 cases Mobiloans?</p> <p>21 MR. GATEWOOD: Objection; form.</p> <p>22 MS. SCHEFF: Object to the form.</p> <p>23 A. So we're saying they're rejected on the</p> <p>24 MoneyMutual site. As I mentioned earlier,</p> <p>25 MoneyMutual -- my recollection is they're not a</p>

<p style="text-align: right;">Page 229</p> <p>1 lender. They're trying to find a lender for a</p> <p>2 consumer that's seeking credit. And so when we</p> <p>3 define is that -- is that a no-state on the</p> <p>4 MoneyMutual site, I know it says it here in this</p> <p>5 insertion order, I'm just not familiar with exactly</p> <p>6 how we were defining that and describing it back to</p> <p>7 the tribe. So it's hard for me to speak exactly</p> <p>8 what -- what led them down this campaign for them to</p> <p>9 be purchased by us.</p> <p>10 MR. ACKELSBERG: Okay. Exhibit 146.</p> <p>11 (Exhibit No. 146 marked.)</p> <p>12 BY MR. ACKELSBERG:</p> <p>13 Q. Am I right that on a fairly regular basis,</p> <p>14 Think would generate loan data for each of the three</p> <p>15 products: Plain Green, Great Plains Lending and</p> <p>16 Mobiloans?</p> <p>17 MR. SCHEFF: Object to the form.</p> <p>18 A. That's correct.</p> <p>19 BY MR. ACKELSBERG:</p> <p>20 Q. Okay. And am I -- am I also correct that</p> <p>21 one of the pieces of data that Think Finance would</p> <p>22 keep track of was the state in which the customer --</p> <p>23 the customer of the particular product lived?</p> <p>24 A. That's correct.</p> <p>25 MR. GATEWOOD: Objection; form.</p>	<p style="text-align: right;">Page 231</p> <p>1 presentation.</p> <p>2 Q. So, for example, at 325465, where it shows</p> <p>3 the Mobiloans outstanding by state --</p> <p>4 A. Sorry, just real quick. Okay.</p> <p>5 Q. You see that, correct?</p> <p>6 A. I do.</p> <p>7 Q. And that's a typical -- that's a typical</p> <p>8 format?</p> <p>9 MR. SCHEFF: Object to the form.</p> <p>10 BY MR. ACKELSBERG:</p> <p>11 Q. The information was -- was presented in</p> <p>12 this manner on a -- what, on a monthly basis or a</p> <p>13 weekly basis or. . .</p> <p>14 MR. SCHEFF: Object to the form.</p> <p>15 BY MR. ACKELSBERG:</p> <p>16 Q. How often was -- was Think assessing the</p> <p>17 state distribution of its particular -- in its</p> <p>18 particular products by loan balance?</p> <p>19 MR. SCHEFF: Is it the last question</p> <p>20 you want him to answer, or the other three?</p> <p>21 A. Typically, a report like on 465 would be</p> <p>22 created monthly and shared with the lenders and</p> <p>23 internally.</p> <p>24 BY MR. ACKELSBERG:</p> <p>25 Q. And, in fact, on the previous page, this</p>
<p style="text-align: right;">Page 230</p> <p>1 BY MR. ACKELSBERG:</p> <p>2 Q. And am I also correct that it would also</p> <p>3 track the -- the amount of loan principal</p> <p>4 outstanding at a particular period of time that was</p> <p>5 attributable to consumers in a particular state by</p> <p>6 product?</p> <p>7 MR. GATEWOOD: Objection; form.</p> <p>8 A. Yes, it would.</p> <p>9 BY MR. ACKELSBERG:</p> <p>10 Q. Okay. And so if you turn to page TF-PA</p> <p>11 32- -- 325464 -- and just so -- just so we're clear,</p> <p>12 I believe the -- this overview presentation that</p> <p>13 we're looking at is grouped by product. Correct?</p> <p>14 A. I guess I'm trying to refresh my memory on</p> <p>15 this document. Was this all one single</p> <p>16 presentation, or is this parts of multiple</p> <p>17 presentations?</p> <p>18 Q. I believe this is all one single</p> <p>19 presentation.</p> <p>20 A. Okay. Because, usually, when we have an</p> <p>21 agenda like this, we would -- like, if you look on</p> <p>22 325458, it's starting with Section 3, but we didn't</p> <p>23 cover -- we usually would have an agenda section</p> <p>24 that kind of intros each area we're going into. I</p> <p>25 was just trying to confirm if this is all one -- one</p>	<p style="text-align: right;">Page 232</p> <p>1 one is -- when it says "ILP," this would be combined</p> <p>2 Great Plains and Plain Green, right, if it was done</p> <p>3 in this manner?</p> <p>4 A. That's correct, this would be both --</p> <p>5 both two -- both of those products.</p> <p>6 Q. Okay. And on TF-PA 325473, this says --</p> <p>7 it's a map of outsource partners?</p> <p>8 A. That's correct.</p> <p>9 Q. CenterOne, that's CMS?</p> <p>10 A. Yes.</p> <p>11 Q. And they were located in Buffalo?</p> <p>12 A. That's correct.</p> <p>13 Q. And MetaSource was located in Pennsylvania</p> <p>14 and in Salt Lake City?</p> <p>15 A. That's correct.</p> <p>16 Q. And Televista was located in Mexico?</p> <p>17 A. Yes, that's correct.</p> <p>18 Q. And KM2 was located in Honduras?</p> <p>19 A. That's correct.</p> <p>20 Q. And these were -- and these were various</p> <p>21 call centers that were operating -- that were</p> <p>22 outsourcing some of the collection calls for the</p> <p>23 three products?</p> <p>24 A. So my recollection is the collection calls</p> <p>25 for the lenders were handled through CenterOne. The</p>

<p>Page 233</p> <p>1 other -- the other three, MetaSource and Televista, 2 and KM2, were handling customer service calls for 3 the partners and, of course, some of Think's direct 4 products. 5 Q. Now, is customer service different than 6 verifications? 7 A. I believe that at this point in time, we 8 had verifications trained separately from customer 9 service. I think over time, as it evolved, they 10 were -- they became -- became grouped together down 11 the road. But at this point, verifications was 12 separate. 13 Q. And what kind of an issue would customer 14 service deal with? 15 A. Customer service is typically once an 16 account is on-boarded and has an active loan. So if 17 a consumer is calling in to ask to make a payment, 18 to move a due date, just ask general questions about 19 their payoff balance. So once an account is 20 on-boarded, that would be more of a customer service 21 question. 22 Q. Okay. 23 MR. ACKELSBURG: I am going to skip 24 two documents to move things along and just go right 25 to 14- -- go to 149.</p>	<p>Page 235</p> <p>1 The -- the presentation is entitled "Strengthening 2 Tribal Model and Program Update." And on page 3 of 3 the presentation, there are two item listed under 4 "Tribal Model Concerns." Do you see that? 5 A. I do. 6 Q. Okay. And the first is "Aiding Abetting" 7 and the second is "True Lender"? 8 A. Yes. 9 Q. Okay. So what do you recall -- what 10 were -- what were your concerns with regard to the 11 true lender? You say in the bullet, "States may 12 argue that the tribe is not the true lender," and 13 that, "Recent cases have suggested potential 14 liability." 15 MR. GATEWOOD: Mr. Ackelsberg, can I 16 confer -- can we take a short break for me to confer 17 with the witness to ask a couple questions about the 18 document -- 19 MR. ACKELSBURG: Sure. 20 MR. GATEWOOD: -- to ensure that there 21 are no privilege concerns here? 22 THE VIDEOGRAPHER: We are off the 23 record. The time is 3:25 p.m. 24 (Break taken, 3:25 p.m. to 3:30 p.m.) 25 THE VIDEOGRAPHER: We are back on</p>
<p>Page 234</p> <p>1 (Exhibit No. 149 marked.) 2 BY MR. ACKELSBURG: 3 Q. Now, on -- now, I am going to represent to 4 you, Mr. Harvison, that when this document was 5 produced to us, it came with metadata that said you 6 were the author and the custodian of this document. 7 Does it look familiar to you? 8 A. It looks familiar. 9 Q. Okay. And do you recall preparing it? 10 A. I do. 11 Q. So if you could turn to page 3 of the -- 12 and this is a PowerPoint? 13 A. That's correct. 14 Q. And who would have been the audience for 15 this PowerPoint? 16 A. So this here, I'm not sure if this was just 17 shared internally or -- I believe this was just 18 shared internally. 19 Q. "Internally," meaning the executive team? 20 A. I believe so. 21 Q. Or the products team or what? 22 A. It would have been the executive team and 23 some of the product teams. 24 Q. Okay. And I want to focus on -- so the 25 date of this -- the document is December 20th, 2012.</p>	<p>Page 236</p> <p>1 record. The time is 3:30 p.m. 2 BY MR. ACKELSBURG: 3 Q. During this period of time, or shortly 4 thereafter, do you remember the executive team 5 having an initiative that was referred to as 6 "tribalization"? 7 A. So what I recall is around the fall of 8 2012, we had been partnering with tribal partners 9 for almost two years now, and I think a term came 10 up, tribalization. But the whole -- the whole 11 meaning behind that was we knew that the 12 partnerships with the tribes would be an evolution. 13 So what was established on day one, that would 14 continue to evolve, and they would take more and 15 more ownership and responsibilities and build out 16 their internal staffs and their -- their control and 17 capabilities. 18 And so as you get to the fall of 2012, 19 it's -- it's become a very sizable business for 20 Think Finance. And so this is a point where we're 21 trying to look at, you know, how do you make sure 22 that is this the strongest model possible. 23 Q. And one of the things you wanted to do was 24 to improve the optics as well, right? 25 MR. SCHEFF: Object to the form.</p>

<p style="text-align: right;">Page 253</p> <p>1 they did provide some feedback early on. I thought</p> <p>2 I saw that. Yeah, so -- so the way this timeline</p> <p>3 reads, there was some draft documentation in October</p> <p>4 and November. So I don't know how much -- a lot of</p> <p>5 this data that I pulled together in this</p> <p>6 presentation was pulling from conversations with</p> <p>7 Sarah and some of the research she's done and also</p> <p>8 the compliance thing that they had looked at in</p> <p>9 working with CRA. So --</p> <p>10 MR. SCHEFF: I caution you not to</p> <p>11 disclose your communications with counsel.</p> <p>12 A. And so while I did create -- I was the</p> <p>13 creator of this document, I was taking pages from</p> <p>14 other documents and then created it and put it in</p> <p>15 there to share with the team.</p> <p>16 BY MR. ACKELSBURG:</p> <p>17 Q. Including some information you had received</p> <p>18 from Charles River Associates?</p> <p>19 A. So, as I mentioned, I was taking excerpts</p> <p>20 from other slides, other -- other presentations to</p> <p>21 put in here. So while our compliance team and legal</p> <p>22 team might have been pulling this -- some of the</p> <p>23 slides together that I was leveraging, I'm not a</p> <p>24 hundred percent certain whether they leveraged some</p> <p>25 of this information from -- in a draft form to come</p>	<p style="text-align: right;">Page 255</p> <p>1 were putting these slides together on Exhibit 149?</p> <p>2 A. I don't.</p> <p>3 Q. You don't. Okay.</p> <p>4 Do you -- when the Charles River report</p> <p>5 came in, was it -- was it considered a crisis by</p> <p>6 the --</p> <p>7 MR. SCHEFF: Object to the form.</p> <p>8 BY MR. ACKELSBURG:</p> <p>9 Q. -- by the executives?</p> <p>10 MR. SCHEFF: Object to the form.</p> <p>11 A. So I wouldn't characterize it as -- as a</p> <p>12 crisis. I think, as I mentioned already in the</p> <p>13 conversation, that when these businesses start to</p> <p>14 scale to the size that they have, I think it's --</p> <p>15 it's an understanding that there's going to be</p> <p>16 opportunities to improve and mature and specialize</p> <p>17 in certain areas. And Plain Green, being the larger</p> <p>18 of the three programs, was -- was first to have</p> <p>19 these type of conversations with on how they could</p> <p>20 mature their organization and go ahead -- go --</p> <p>21 continue to build it out and specialize in certain</p> <p>22 areas because it had become such a sizable entity.</p> <p>23 MR. ACKELSBURG: All right. I'm going</p> <p>24 to skip to a document that I have labelled 153,</p> <p>25 Plaintiff's Exhibit 153.</p>
<p style="text-align: right;">Page 254</p> <p>1 to these conclusions or if that was from research on</p> <p>2 their own.</p> <p>3 Q. So, I'm sorry, I thought -- I thought we</p> <p>4 already established that you -- you were the author</p> <p>5 of the -- of the PowerPoint at 149?</p> <p>6 MR. GATEWOOD: Objection. You --</p> <p>7 MR. SCHEFF: Is there a question?</p> <p>8 MR. GATEWOOD: That's a</p> <p>9 mischaracterization of his prior testimony.</p> <p>10 BY MR. ACKELSBURG:</p> <p>11 Q. Okay. Let's just clarify. So -- and I</p> <p>12 want to clarify it.</p> <p>13 So we started off our discussion of 149</p> <p>14 that, according to the metadata, you were the author</p> <p>15 and the custodian. So I think what you're saying is</p> <p>16 that you actually didn't prepare all of those slides</p> <p>17 yourself?</p> <p>18 A. That -- that's correct.</p> <p>19 Q. You used slides that came from other --</p> <p>20 from other people?</p> <p>21 A. That's correct.</p> <p>22 Q. I see.</p> <p>23 Do you recall looking at any of the</p> <p>24 Charles River -- any preliminary findings from</p> <p>25 Charles River at the time that you were -- that you</p>	<p style="text-align: right;">Page 256</p> <p>1 (Exhibit No. 153 marked.)</p> <p>2 MR. SCHEFF: Again, you know, you've</p> <p>3 marked this before and this is attached to an</p> <p>4 e-mail. Again, you know, you take things out of</p> <p>5 context, and it makes it difficult for the witness</p> <p>6 to respond to questions accurately. Ask your</p> <p>7 questions.</p> <p>8 BY MR. ACKELSBURG:</p> <p>9 Q. So I want to show you another version of</p> <p>10 that map that we looked at before of the service</p> <p>11 providers. This is TF-PA 14425 and 14426. And</p> <p>12 you'll see that besides the map, there's actually a</p> <p>13 legend that gives a little more information about</p> <p>14 the vendor and the particular products that the</p> <p>15 vendor was -- was servicing. Do you see that?</p> <p>16 A. I do.</p> <p>17 Q. And so let me make -- so, for example,</p> <p>18 there's the company, which we haven't mentioned</p> <p>19 before, Yessio, Y-e-s-s-i-o, that has legend J --</p> <p>20 icon J on it. Do you see that?</p> <p>21 A. Yes.</p> <p>22 Q. And Yessio was another collection company</p> <p>23 that was utilized by -- that did collection work for</p> <p>24 these products?</p> <p>25 MR. SCHEFF: Object to the form.</p>

<p style="text-align: right;">Page 257</p> <p>1 A. So did collection work for -- I can't 2 remember if it did it for one or all of the 3 products, but they did do some work on -- on those 4 programs. 5 BY MR. ACKELSBURG: 6 Q. And is this -- is this legend on the second 7 page of the exhibit, does -- is this consistent with 8 your recollection about how the various service 9 providers were assigned to particular products? 10 MR. SCHEFF: Object to the form. 11 MR. GATEWOOD: Objection; form. 12 A. That -- that looks correct. 13 BY MR. ACKELSBURG: 14 Q. Okay. Now, Yessio is another company. 15 That's Bret Horrocks' company, isn't it? 16 A. That was a company started by Bret 17 Horrocks. 18 Q. So explain to me the difference between the 19 services provided for the company we talked 20 previously about, SourceItOne, and this company 21 called Yessio. 22 A. Sure. SourceItOne was more of a consulting 23 company to help with, as I mentioned earlier, 24 identifying potential debt buyers, how to optimize, 25 make suggestions on collection strategies, and</p>	<p style="text-align: right;">Page 259</p> <p>1 A. So at this point in time, we were looking 2 to see how much more the lending operations could be 3 expanded within -- within Indian country. Ho Chunk 4 was a tribe that has multiple different business 5 ventures, and so we went to meet with them to see if 6 they would be interested in -- in partnering to -- 7 to take over some collection activities and help 8 support the partners that we also had and also look 9 to grow that from there. 10 Q. So why don't you tell us how this was going 11 to work. This never came to fruition; am I right? 12 A. That's correct, nothing ever came of it. 13 Q. Now, was this your idea or Bret's idea? 14 A. I think this probably came -- actually, I 15 don't remember who came up with this idea. Might 16 have been on our side, brainstorming side, I think. 17 Q. And this was another way to increase the 18 tribal involvement in the business? 19 A. Yeah, as I mentioned earlier, this -- this 20 was a thought of could you have another tribal 21 venture, for instance, having the collections being 22 done by a tribal entity. 23 Q. So -- and as you're describing the deal, 24 the basics of the deal in the e-mail -- so first of 25 all, when you -- when SIO is mentioned, that's</p>
<p style="text-align: right;">Page 258</p> <p>1 potentially find other third-party collectors to 2 collect on behalf of the lenders. 3 Yessio, the way I remember it, was Bret 4 started this up to be an actual collection service 5 organization so they would actually have collectors 6 in-house doing the collections themselves. 7 Q. All right. Let me show you one other 8 document with regard to Yessio and yourself. 9 (Exhibit No. 154 marked.) 10 MR. SCHEFF: What's this one? 11 MR. ACKELSBURG: 154. 12 BY MR. ACKELSBURG: 13 Q. Now, do you remember this whole saga 14 regarding yourself and Bret Horrocks and another 15 Indian tribe called the Ho Chunks? 16 MR. GATEWOOD: Objection; form. 17 MR. SCHEFF: Object to the form. 18 A. I do remember the discussion. 19 BY MR. ACKELSBURG: 20 Q. Okay. And this presentation that's 21 attached to the -- to the e-mail, is that a 22 presentation that you prepared? 23 A. Yes, it is. 24 Q. And am I right that you and Bret were -- 25 had this idea to create a tribal collection company?</p>	<p style="text-align: right;">Page 260</p> <p>1 SourceItOne, right? 2 A. That's correct. 3 Q. Okay. So the Ho Chunk tribe would buy 4 Yessio from Bret Horrocks for a nominal amount. 5 That was Step 1, right? 6 A. That's correct. 7 Q. Okay. Step 2, Yessio would sign a 8 management contract with SIO, Bret's other company, 9 to actually do the work, right? 10 A. When you say "work". . . 11 Q. Well, the idea here was that -- was that 12 Bret would continue to do the collections, only 13 you're just changing -- changing the ownership, 14 right? 15 MR. GATEWOOD: Objection; form. 16 BY MR. ACKELSBURG: 17 Q. Isn't that -- wasn't that the basic idea? 18 A. So the actual thought was that -- that 19 Ho Chunk could actually own what -- could buy what 20 Bret had built out within Yessio, and then, yes, 21 they would service -- they'd contract back with Bret 22 to help teach them the business and grow it so that 23 they could take on more and more responsibility of 24 the collections process. 25 Q. And Ho Chunk would get a fee from SIO for</p>

<p style="text-align: right;">Page 261</p> <p>1 owning the company?</p> <p>2 MR. GATEWOOD: Objection; form.</p> <p>3 A. I'd have to go back and look exactly. I</p> <p>4 believe Ho Chunk would actually get -- since</p> <p>5 Ho Chunk owns Yessio -- the way it was proposed,</p> <p>6 Ho Chunk would own Yessio. Yessio would contract</p> <p>7 with third-party lenders. They would pay fees back</p> <p>8 into Yessio. Yessio would contract with SourceOne</p> <p>9 for different services. But then those</p> <p>10 distributions could be paid out to Ho Chunk so they</p> <p>11 could earn -- they could earn a revenue stream off</p> <p>12 of -- off of that call center.</p> <p>13 BY MR. ACKELSBURG:</p> <p>14 Q. I want to shift to a different subject, the</p> <p>15 split into two companies. At the time of the split,</p> <p>16 before you went over to Elevate, what was your</p> <p>17 compensation package with Think Finance?</p> <p>18 A. Gosh, that was about four years ago. I</p> <p>19 would have to go back and look. It was probably</p> <p>20 roughly around a base salary of 300,000.</p> <p>21 Q. And did you also own shares in Think?</p> <p>22 A. I did have a small amount of shares that</p> <p>23 I -- well, I had exercised some options and had</p> <p>24 shares in Think.</p> <p>25 Q. And after the split, you immediately moved</p>	<p style="text-align: right;">Page 263</p> <p>1 MR. ACKELSBURG: So you're directing</p> <p>2 him not to answer?</p> <p>3 MR. SCHEFF: I am.</p> <p>4 BY MR. ACKELSBURG:</p> <p>5 Q. Okay. How is the decision made with regard</p> <p>6 to who stays at Think and who goes to Elevate?</p> <p>7 MR. GATEWOOD: Objection; form.</p> <p>8 I'll just instruct the witness not to</p> <p>9 answer to the extent that the answer requires</p> <p>10 information divulged to you from Think's counsel.</p> <p>11 A. Sure. So I think if you look at the way</p> <p>12 that the company was operating exiting 2013 going</p> <p>13 into 2014, on the product side, there was fairly</p> <p>14 clear distinct lines of -- of Michelle had been</p> <p>15 running the -- the tribal businesses. Another lady</p> <p>16 had been working with me to run the -- the RISE</p> <p>17 product, and we had another product we were looking</p> <p>18 to take to market. So it was an easy identification</p> <p>19 to figure out who would split there.</p> <p>20 You look at -- on the IT side, we had two</p> <p>21 senior leaders, very capable of being CIOs. So we</p> <p>22 made decisions to split that, and they allocated</p> <p>23 their staff appropriately. On the -- on the finance</p> <p>24 side, the intent was for Chris to move over to</p> <p>25 Elevate, but Think Finance needed to hire somebody</p>
<p style="text-align: right;">Page 262</p> <p>1 to Elevate with Ken Rees, right?</p> <p>2 A. That's correct.</p> <p>3 Q. What are you being paid now?</p> <p>4 A. My base pay is around \$400,000.</p> <p>5 Q. And do you own shares in Elevate?</p> <p>6 A. I do.</p> <p>7 Q. And how many shares?</p> <p>8 A. Shares that I own outright, I probably own</p> <p>9 150,000 shares.</p> <p>10 Q. And from the time that the company split,</p> <p>11 have there been any distributions to Elevation -- to</p> <p>12 Elevate shareholders?</p> <p>13 MR. GATEWOOD: Objection; form.</p> <p>14 MR. SCHEFF: Objection. Why are we</p> <p>15 asking these questions about Elevate? This case</p> <p>16 isn't about Elevate. If you want to ask about the</p> <p>17 spinoff, that's fine. But I don't know the basis</p> <p>18 for asking these questions. So I would like an</p> <p>19 answer to that question. Distributions from Elevate</p> <p>20 to Mr. Harvison?</p> <p>21 MR. ACKELSBURG: Yeah.</p> <p>22 MR. SCHEFF: We're not talking about</p> <p>23 that.</p> <p>24 MR. ACKELSBURG: Okay.</p> <p>25 MR. SCHEFF: Move on.</p>	<p style="text-align: right;">Page 264</p> <p>1 to backfill for that. So that's why Chris stayed</p> <p>2 for about a year following the split.</p> <p>3 But the company, at that point of, you</p> <p>4 know, the split, I think in 2013, had generated</p> <p>5 600-, \$650 million of revenue, had 400 or 500</p> <p>6 employees. It was at a size where there were -- we</p> <p>7 had -- we had -- I wouldn't say we had enough</p> <p>8 employees staffed to actually do a split where</p> <p>9 everything was fully staffed, but we could support</p> <p>10 the business lines and then each organization could</p> <p>11 grow on its own from there.</p> <p>12 BY MR. ACKELSBURG:</p> <p>13 Q. And am I right what was left at Think was</p> <p>14 entirely -- was just the tribal products?</p> <p>15 MR. GATEWOOD: Objection; form.</p> <p>16 A. So what remained with Think Finance was the</p> <p>17 service provider products.</p> <p>18 BY MR. ACKELSBURG:</p> <p>19 Q. The three tribal products?</p> <p>20 A. That's correct.</p> <p>21 MR. ACKELSBURG: Take a brief break.</p> <p>22 We're close to the end.</p> <p>23 THE VIDEOGRAPHER: We're off the</p> <p>24 record. The time is 4:10 p m.</p> <p>25 (Break taken, 4:10 p m. to 4:19 p m.)</p>

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

COMMONWEALTH OF PENNSYLVANIA *

by Attorney General JOSH *

SHAPIRO, *

Plaintiff, *

VS. * Civil Action

* No. 14-7139-JCJ

THINK FINANCE, INC., et al., *

Defendants. *

ORAL AND VIDEOTAPED DEPOSITION OF

LINDA CALLNIN

MARCH 8, 2018

DEPOSITION of LINDA CALLNIN, produced as a witness at the instance of the Plaintiff, and duly sworn, was taken in the above-styled and numbered cause on the 8th day of March, 2018, from 9:08 a.m. to 3:15 p.m., before Christy R. Sievert, CSR, RPR, in and for the State of Texas, reported by machine shorthand, at the offices of Hunton & Williams, LLP, 1445 Ross Avenue, Suite 3700, Dallas, Texas 75202, pursuant to the Federal Rules of Civil Procedure and the provisions stated on the record or attached hereto.

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Reporter's Certification..... 252-253

1	EXHIBITS	
2	NUMBER	DESCRIPTION
3	23	Companies a part of Think Finance, Inc
4		TF-PA-228224
5	24	Finance Org Structure
6		TF-PA409810, TF-PA178525
7	25	Daily Cash Instructions
8		TF-PA318531 - 318539
9	26	E-mail correspondence, 11-19-12
10		Re: Cash Movement
11		TF-PA540675 - 540678
12	27	E-mail correspondence, 9-10-12
13		Re: Great Plains Lending Daily Settlement Reports for 09-07-2012
14		TF-PA325814 - 325816
15	28	E-mail correspondence, 9-19-12
16		Re: Approvals
17		TF-PA527512 - 527513
18	29	TC Loan Service, Account
19		Clarification, 9-30-12
20		GPLP00313236 - 00313246
21	30	Spreadsheet
22		GPLP00435570 - 00435590
23	31	E-mail correspondence, 11-15-12
24		Re: Docs Highlighting Control of Tribal Accounts
25		GPLP00048680 - 00048681
26	32	Wells Fargo, Commercial
27		Electronic Office (CEO) Portal
28	33	E-mail correspondence, 10-18-13
29		Re: Wire Approval
30		TF-PA288913 - 288915
31	34	E-mail correspondence, 10-4-13
32		Re: Cash
33		TF-PA684666, TF-PA429839 - 429840

1	EXHIBITS (continued)	
2	NUMBER	DESCRIPTION
3	43	E-mail correspondence, 9-23-14
4		Re: Portfolio Access
5		TF-PA051916 - 051919
6	44	E-mail correspondence, 9-22-14
7		Re: Portfolio Access
8		TF-PA052208 - 052209
9	45-48	(Not identified or marked.)
10	49	Finance Team - Structure-Draft
11		TF-PA178509 - 178510
12	50	(Not identified or marked.)
13	51	Think Finance Defendants' Response To Plaintiff's First Set of Interrogatories
14	52A	E-mail correspondence, 1-5-15
15		Re: Fw: Clayton Wire - Today
16		TF-PA 393463 - 393465
17	52B	E-mail correspondence, 12-23-14
18		Re: New Investor for PA loans
19		TF-PA038003 - 038004

1	EXHIBITS (continued)	
2	NUMBER	DESCRIPTION
3	35	Third Amended and Restated Administrative Agency Agreement
4		TF-PA-000241 - 000275
5	36	E-mail correspondence, 7-6-15
6		Re: Tribe Financials
7		TF-PA470356 - 470358
8	37	Plain Green, LLC Standard Operating Procedure #300-40
9		Daily Wire Transfers
10		TF-PA378980 - 378981
11	38A	E-mail correspondence, 1-30-15
12		Re: Daily Wire Transfer SOP
13		TF-PA096707 - 096709
14	38B	Standard Operating Procedure
15		TF-PA178669 - 178670
16	39A	E-mail correspondence, 3-21-13
17		Re: Call Centers
18		TF-PA013829 - 013831
19	39B	Map
20		TF-PA014425 - 014426
21	40	Information obtained through inquiry of Linda Callnin and Janice Weikert, 8-11-15
22		TF-PA300153 - 300154
23	41A	E-mail correspondence, 9-27-1
24		Re: Incident #IR-0101078 is closed
25		TF-PA291639 - 291640
26	41B	E-mail correspondence, 9-4-14
27		Re: Fw: Wire Approvals
28		TF-PA291806
29	42	E-mail correspondence, 9-4-14
30		Re: Wire Approvals
31		TF-PA440122 - 440125

1 PROCEEDINGS

2 THE VIDEOGRAPHER: We are now on the

3 record for the videotaped deposition of Linda

4 Callnin. The time is 9:08 a.m., March 8, 2018, in

5 the matter of Commonwealth of Pennsylvania, et al.,

6 vs. Think Finance. Civil Action No. 14-7139-JC- --

7 excuse me -- JCJ, being held in the United States

8 District Court for the Eastern District of

9 Pennsylvania.

10 The court reporter is Linda Callnin, and

11 the video- -- excuse me. The court reporter is

12 Christy Sievert, and the videographer is Gus

13 Phillips. Both are representatives of Kaplan,

14 Leaman & Wolfe Court Reporters.

15 Will the court reporter please administer

16 the oath.

17 (Oath administered.)

18 THE VIDEOGRAPHER: Will counsel please

19 state their appearances for the record.

20 MR. ACKELSBURG: Irv Ackelsberg for

21 the plaintiff, Commonwealth of Pennsylvania.

22 MR. GROGAN: John Grogan, also for the

23 Commonwealth.

24 MS. MORRIS: Francis Morris for

25 National Credit Adjusters.

<p style="text-align: right;">Page 9</p> <p>1 MR. SHAPIRO: Dan Shapiro for the 2 Victory Park defendants. 3 MR. SCHEFF: Richard Scheff for Ken 4 Rees. 5 MR. SHELDON: Matt Sheldon for Think 6 Finance, joined with -- by Tom Graber with Think 7 Finance. 8 LINDA CALLNIN 9 having been first duly sworn, 10 testified as follows: 11 EXAMINATION 12 BY MR. ACKELSBERG: 13 Q. Ms. Callnin, good morning. 14 A. Good morning. 15 Q. I am Irv Ackelsberg, and I represent the 16 Pennsylvania Attorney General in -- in a civil 17 action against Think Finance, Mr. Rees, and Victory 18 Park Capital concerning certain loan programs. You 19 understand that, correct? 20 A. Yes. 21 Q. Okay. And you're going to have to speak 22 up. The -- the court reporter has to hear your 23 answer, and -- and also, the videographer has to -- 24 has to hear it. Okay? 25 A. Okay.</p>	<p style="text-align: right;">Page 11</p> <p>1 for figuring out who's owed what and from which 2 account, things like that? 3 MR. SHELDON: Object to form. 4 A. Not for the entire program. Only -- only 5 for certain pieces of the program. 6 BY MR. ACKELSBERG: 7 Q. Okay. And we'll -- we'll get into that. 8 But for certain pieces of the program, 9 you're responsible for figuring out who's owed what 10 and from which account? 11 A. Correct. 12 Q. And -- and are you responsible for making 13 sure that -- either past or present, because we're 14 talking about a period of time going back a ways, 15 but have you also been responsible for making sure 16 that GPLS was paid what Think was obligated to pay 17 them? 18 MR. SHELDON: Object to form. 19 A. That was not in my area. 20 BY MR. ACKELSBERG: 21 Q. Okay. That was in someone -- someone else 22 within finance? 23 A. Yes. 24 Q. Okay. And what about invoicing and paying 25 fees owed by the tribal entities?</p>
<p style="text-align: right;">Page 10</p> <p>1 Q. And let -- let's just start with who you're 2 employed by. 3 A. Think Finance. 4 Q. And what's your position there? 5 A. Accounting operations controller. 6 Q. And as operations controller, you're 7 responsible for, among other things, accounting for 8 the ACH transfers going in and out every day? 9 A. Yes. Responsible for making sure that cash 10 balances the system that goes in and out every day. 11 Q. And that includes the ACH -- the ACH 12 activity as well as the activity of the various bank 13 accounts that you're -- you're managing, correct? 14 MR. SHELDON: Object to form. 15 At various times today, Ms. Callnin, I may 16 object. And unless I instruct you not to answer -- 17 THE WITNESS: Okay. 18 MR. SHELDON: -- please do answer, and 19 you -- you can ignore my objections. 20 MR. ACKELSBERG: I appreciate it. 21 Thank you. 22 A. Yeah, for -- for accounts that are within 23 the program, yes. 24 BY MR. ACKELSBERG: 25 Q. Okay. And -- and you're also responsible</p>	<p style="text-align: right;">Page 12</p> <p>1 A. The invoicing was not in my area. 2 Q. Now -- but it's something that you 3 understand how the -- how the process works, though? 4 A. I have -- I have limited knowledge of the 5 process, yes. 6 Q. Okay. And -- and is that also true of -- 7 of the -- of the payments to GPLS, that you have 8 knowledge, some knowledge, limited knowledge, but 9 you're not immediately responsible for that? 10 MR. SHELDON: Object to form. 11 A. I have limited knowledge of that process. 12 BY MR. ACKELSBERG: 13 Q. And that's -- but that goes on within the 14 Think finance department? 15 A. Yes, it does. 16 Q. And what about the invoicing and paying the 17 revenue share payments to the tribal entities? 18 A. I have limited knowledge of that, yes. 19 Q. Okay. But that also goes on within -- 20 A. Yes, it does. 21 Q. -- the finance department? Okay. 22 MR. SHELDON: Linda, just make sure 23 you wait for Mr. Ackelsberg to finish asking his 24 question. In some cases, you're going to know the 25 answer, and you already have known several answers,</p>

<p style="text-align: right;">Page 25</p> <p>1 I've forgotten the first 22. Don't worry about the 2 numbers. The numbers are just what the numbers are. 3 Okay?</p> <p>4 MR. SHELDON: And don't think you're 5 going to have to look at the first 22, necessarily. 6 BY MR. ACKELSBURG: 7 Q. In fact, I'll promise you that you won't 8 have to look at those -- all those 22. 9 (Exhibit No. 23 marked.) 10 MR. SHELDON: Irv, am I correct that 11 if you pulled a document from its native state and 12 printed it off for this deposition, that you would 13 have put "Confidential" on it if it was produced 14 subject to the confidential designation? 15 MR. ACKELSBURG: Yes. So what I -- 16 what I did, for every -- I'm better organized than I 17 was at the Wilkstein deposition. And so what I've 18 done is, for every time that I'm using a native, I 19 start off with the page that you'd see that -- that 20 just says "spreadsheet" or -- and then it has the TF 21 PA number and "Confidential" on it. You'll see it 22 when we get to the first one. But this isn't one of 23 those. So . . . 24 MR. SHELDON: Thank you. 25 MR. ACKELSBURG: Yeah.</p>	<p style="text-align: right;">Page 27</p> <p>1 Q. So you see under TC Loan Service a company 2 called Tailwind Marketing. You see that, right? 3 A. Yes, sir. 4 Q. And is Tailwind a -- a subsidiary that you 5 are familiar with? 6 A. I have limited knowledge of Tailwind 7 Marketing. 8 Q. And what is your knowledge of Tailwind? 9 A. That it is a servicing entity that did -- 10 that provided marketing services. 11 Q. Okay. And the first -- let's say, in the 12 middle, there's a company called TC Decision 13 Sciences. Is this also a company that you're 14 familiar with from the ledger? 15 A. Yes. 16 Q. And what is TC Decision Sciences, to the 17 best of your knowledge? 18 A. A servicing company that provided decision 19 sciences to clients. 20 Q. What does that mean, "decision sciences"? 21 A. Meaning there are people that provide risk 22 analysis and that kind of service, you know -- it's 23 hard to explain. So if you are going to market to 24 customers, you are going to market to certain 25 segments of customers, and some customers are more</p>
<p style="text-align: right;">Page 26</p> <p>1 BY MR. ACKELSBURG: 2 Q. All right. So let me also explain 3 something to you that -- as you probably know, 4 before this deposition, there's been a lot of 5 documents exchanged. And the documents that came 6 from Think Finance are designated "TF PA." Okay? 7 And you'll see in the lower right-hand corner -- you 8 see that? So we're looking at a document that we've 9 marked today as 23, Plaintiff's Exhibit 23, but also 10 has another identifying mark at the bottom, a Bates 11 number of TF-PA-228224. Do you see that? 12 A. Uh-huh, yes, sir. 13 Q. So I'm showing you a document that Think 14 Finance produced to us. Okay? And I'm going to ask 15 you to look at this and -- and tell me what you see 16 here. 17 A. In my world, legal entities. 18 Q. Okay. And are these entities that are part 19 of the Think Finance company? 20 A. I know that the -- they are part of the 21 general ledger, which is my world. 22 Q. Okay. And so do you -- and do you 23 recognize all of these companies as part of the 24 general ledger of Think Finance, Incorporated? 25 A. Yes.</p>	<p style="text-align: right;">Page 28</p> <p>1 risky than others. These people -- or that entity 2 provided that service. 3 Q. And -- and would that include deciding -- 4 people applying for a loan, deciding who to -- who 5 to approve and who not to approve, as best as you 6 know? 7 A. As best as I know, yes. 8 Q. Okay. And what about TC Administrative 9 Services, is that also a subsidiary that you're 10 familiar with from the standpoint of doing the 11 ledgers? 12 A. Yes, that would have been the entity 13 that provided administrative services to clients. 14 Q. Like who? Who is the client that TC 15 Administrative Services provided services to? 16 A. That would be likely the -- our partners 17 that we have, I would say, agreements with, being 18 Plain Green, Mobiloans, Great Plains. 19 Q. And what about Victory Park? 20 A. I do not know -- 21 Q. Okay. 22 A. -- if TC Administrative had an agreement. 23 Q. Okay. Now, these companies that we've 24 mentioned -- well, let me ask another one first. 25 What about TC Loan Services, what's that company?</p>

<p style="text-align: right;">Page 29</p> <p>1 Do you know?</p> <p>2 MR. SHELDON: Object to form.</p> <p>3 BY MR. ACKELSBURG:</p> <p>4 Q. What's that subsidiary -- what's that</p> <p>5 subsidiary of Think Finance do, as far as you know?</p> <p>6 A. I have very limited knowledge of that other</p> <p>7 than it was an entity set up for some sort of legal</p> <p>8 purpose.</p> <p>9 Q. Okay. Now, does -- does Tailwind Marketing</p> <p>10 have its own employees?</p> <p>11 A. No, it does not.</p> <p>12 Q. Does TF -- TC Decision Sciences, does that</p> <p>13 have its own employees?</p> <p>14 A. Not that I'm aware of.</p> <p>15 Q. TC Administrative Services, does it have</p> <p>16 its own employees?</p> <p>17 A. Not that I'm --</p> <p>18 Q. Do any of these companies that we've talked</p> <p>19 about have their own employees?</p> <p>20 MR. SHELDON: Object to form.</p> <p>21 A. I believe TC Loan Services had employees.</p> <p>22 BY MR. ACKELSBURG:</p> <p>23 Q. And who would those employees be? Do you</p> <p>24 know?</p> <p>25 A. Employees of Think Finance.</p>	<p style="text-align: right;">Page 31</p> <p>1 A. Not -- not that I'm aware of.</p> <p>2 Q. Okay. So basically -- well, why don't --</p> <p>3 why don't you -- let's take a point in time. Let's</p> <p>4 say -- well, let me ask you this: Was there a point</p> <p>5 in time between 2007 and now that you can identify</p> <p>6 as the point where Think Finance had the biggest</p> <p>7 staff level, the most employees?</p> <p>8 A. I'm -- I'm confused on your question.</p> <p>9 Q. Okay. Sure.</p> <p>10 A. I --</p> <p>11 Q. So -- so you said in 2007, when they --</p> <p>12 when you arrived, there were a hundred to 200</p> <p>13 employees, right?</p> <p>14 A. Yes.</p> <p>15 Q. How many are there now, in 2018?</p> <p>16 A. 2018? Less than a hundred.</p> <p>17 Q. Less than a hundred. Okay. So was there a</p> <p>18 point in time where there were more than 200?</p> <p>19 A. I believe so.</p> <p>20 Q. Would it -- would it be, like, roughly 2013</p> <p>21 or so?</p> <p>22 MR. SHELDON: Object to form.</p> <p>23 BY MR. ACKELSBURG:</p> <p>24 Q. Would that sound about right?</p> <p>25 A. That could possibly be.</p>
<p style="text-align: right;">Page 30</p> <p>1 Q. Pardon?</p> <p>2 A. Employees of Think Finance.</p> <p>3 Q. Okay. So -- so when you got a paycheck,</p> <p>4 did you get a paycheck from TC Loan Services?</p> <p>5 MR. SHELDON: Object to form.</p> <p>6 A. I believe that's what my pay -- that's what</p> <p>7 the paycheck says.</p> <p>8 BY MR. ACKELSBURG:</p> <p>9 Q. Okay. And that's true of everybody at</p> <p>10 Think Finance, as far as you know?</p> <p>11 A. To the best of my ability, yeah.</p> <p>12 Q. From the CEO down to the clerks?</p> <p>13 A. I don't -- I don't know their level of</p> <p>14 paycheck.</p> <p>15 Q. Okay. All right. That's fine.</p> <p>16 And did -- did Tailwind have its own floor</p> <p>17 in the building or its own section or -- or was this</p> <p>18 really just a ledger. . .</p> <p>19 MR. SHELDON: Object to form.</p> <p>20 BY MR. ACKELSBURG:</p> <p>21 Q. Yeah. I mean, what -- so -- so Tailwind --</p> <p>22 Tailwind didn't have its own employees, right? Did</p> <p>23 it have a section? Was there, like, a section</p> <p>24 marked off in the office, this is the Tailwind</p> <p>25 section?</p>	<p style="text-align: right;">Page 32</p> <p>1 Q. Okay. At that point, when it was the</p> <p>2 biggest, and let's say around 2013 or -- but the</p> <p>3 date isn't so much -- it's not so important as the</p> <p>4 point when the employees were at their highest --</p> <p>5 their highest number. Okay?</p> <p>6 A. Uh-huh (affirmative response).</p> <p>7 Q. Can you describe -- well, first of all, how</p> <p>8 many floors in the building did the company have?</p> <p>9 MR. SHELDON: Object to form.</p> <p>10 A. Two that I'm aware of, that I can remember.</p> <p>11 BY MR. ACKELSBURG:</p> <p>12 Q. Okay. And this is at the same Fort Worth</p> <p>13 address that you started at?</p> <p>14 A. Yes, sir.</p> <p>15 Q. And what is that address?</p> <p>16 A. 4150 International Plaza.</p> <p>17 Q. In Fort Worth?</p> <p>18 A. Fort Worth.</p> <p>19 Q. Okay. And can you explain what happened</p> <p>20 on -- what activities occurred on the two floors?</p> <p>21 How were -- how were -- back in that -- in that</p> <p>22 period of time, when -- when the staff was at its</p> <p>23 biggest, what went on in those two different floors?</p> <p>24 First of all, where were you? Where were you</p> <p>25 located?</p>

<p style="text-align: right;">Page 49</p> <p>1 Q. Okay. And this was the responsibility of</p> <p>2 your team?</p> <p>3 A. Yes.</p> <p>4 Q. Okay. Well, I'll tell you what, if you --</p> <p>5 if you're not familiar with this document, we'll</p> <p>6 just -- we'll -- we'll ask someone -- who would</p> <p>7 know? Do you know? Do you know who likely would</p> <p>8 know about this?</p> <p>9 A. Given -- given the year, it was treasury,</p> <p>10 David Gentry, which may have fallen under L2.</p> <p>11 Q. Okay. We'll ask L2.</p> <p>12 MR. ACKELSBURG: I'm going to show you</p> <p>13 another document, 27.</p> <p>14 MR. SHAPIRO: 27?</p> <p>15 MR. ACKELSBURG: 26. I'm sorry.</p> <p>16 MR. SHELTON: For the record, this</p> <p>17 document is also marked "Confidential."</p> <p>18 (Exhibit No. 26 marked.)</p> <p>19 BY MR. ACKELSBURG:</p> <p>20 Q. Now, this is -- this is -- I realize this</p> <p>21 is a document that has Linda -- Linda 2 on it, not</p> <p>22 Linda 1. And I'm going to ask you questions about</p> <p>23 it, but I guess the first question would be, is this</p> <p>24 something you had ever seen before?</p> <p>25 A. Not -- not this --</p>	<p style="text-align: right;">Page 51</p> <p>1 Billi Anne Morsette and -- and Bobbi Favel. Do you</p> <p>2 see that?</p> <p>3 A. Yes, sir.</p> <p>4 Q. Okay. Are these people that you have --</p> <p>5 you've had any contact with in the past, Billi Anne</p> <p>6 Morsette or Bobbi Favel?</p> <p>7 A. No.</p> <p>8 Q. No -- no --</p> <p>9 A. I have --</p> <p>10 Q. -- direct contact --</p> <p>11 A. Not to my --</p> <p>12 Q. -- at all?</p> <p>13 A. No. No.</p> <p>14 Q. Okay.</p> <p>15 MR. SHELTON: And, Linda, don't</p> <p>16 forget, you need to let Irv finish asking his</p> <p>17 questions.</p> <p>18 Irv, don't forget, Linda needs to be able</p> <p>19 to finish --</p> <p>20 MR. ACKELSBURG: Sure.</p> <p>21 MR. SHELTON: -- answering her</p> <p>22 question.</p> <p>23 BY MR. ACKELSBURG:</p> <p>24 Q. Let me ask you this: Did the -- did you</p> <p>25 have contact with anyone at Plain Green, you have</p>
<p style="text-align: right;">Page 50</p> <p>1 Q. Well, the e-mail -- it looks like you're</p> <p>2 not on the e-mail. But what about the attachment to</p> <p>3 the e-mail?</p> <p>4 MR. ACKELSBURG: And by the way, Matt,</p> <p>5 you can see how I -- you can -- let me show you how</p> <p>6 I -- how I did prepare the exhibit. So -- this goes</p> <p>7 to your question at the beginning. So attached to</p> <p>8 this e-mail was a file, the file -- the -- that page</p> <p>9 in nonnative shows the "Confidential" stamp. Do you</p> <p>10 see? And then the next thing I did was, I down- --</p> <p>11 I then downloaded the native Excel, and I made a</p> <p>12 screenshot so you can see the tabs on it. And then</p> <p>13 I just copied the tabs. And that's -- that's how I</p> <p>14 created this exhibit.</p> <p>15 MR. SHELTON: Thank you for that. And</p> <p>16 for the record, the entire Exhibit P-26 was produced</p> <p>17 as confidential and is marked as "Confidential" in</p> <p>18 the way Irv described, wherein the page Bates</p> <p>19 numbered TF-PA-540678 indicates confidentiality of</p> <p>20 the subsequent pages.</p> <p>21 BY MR. ACKELSBURG:</p> <p>22 Q. So let me -- let me just start with -- you</p> <p>23 can see this is an e-mail that -- there's an e-mail</p> <p>24 trail here that starts from the second page, and</p> <p>25 it -- you can see it -- it's from Linda Rogenski to</p>	<p style="text-align: right;">Page 52</p> <p>1 direct contact?</p> <p>2 A. In their accounting area.</p> <p>3 Q. Okay. And would that be true also of Great</p> <p>4 Plains Lending and Mobiloans?</p> <p>5 A. Yes, sir.</p> <p>6 Q. Okay. So and who is -- there's a Michelle</p> <p>7 Nguyen, N-g-u-y-e-n.</p> <p>8 A. Uh-huh (affirmative response).</p> <p>9 Q. Is Michelle Nguyen -- who is she?</p> <p>10 A. At that time, she worked for Think Finance,</p> <p>11 and she was a product manager.</p> <p>12 Q. She's not at Think Finance now?</p> <p>13 A. No.</p> <p>14 Q. Where is she?</p> <p>15 A. I am not sure.</p> <p>16 Q. Okay. So you see that Linda is sending --</p> <p>17 well, let me ask you this: Are these names you've</p> <p>18 heard of? Did you ever hear the name Billi Anne</p> <p>19 Morsette or Bobbi Jo Favel?</p> <p>20 A. Bobbi Jo, I had never heard of. Billi</p> <p>21 Anne, I had heard the name.</p> <p>22 Q. You knew of the name?</p> <p>23 A. I knew of the name.</p> <p>24 Q. Okay. So you see the context here, that</p> <p>25 Linda is sending two people at Plain Green what</p>

<p style="text-align: right;">Page 53</p> <p>1 Linda describes as a "high-level cash movement</p> <p>2 analysis." Do you see that?</p> <p>3 A. Uh-huh (affirmative response).</p> <p>4 Q. Okay. Flip the pages to the -- well, first</p> <p>5 of all, let me ask you this before we flip the</p> <p>6 pages: Do you see that on -- on page 3 -- actually,</p> <p>7 on the very -- very first page, both of them, that</p> <p>8 Linda 2 identified -- is identified on the -- the</p> <p>9 e-mail as the "Universal Fund controller." Do you</p> <p>10 see that?</p> <p>11 A. I see it there, yeah.</p> <p>12 Q. Do you know why she's called the Universal</p> <p>13 Fund controller?</p> <p>14 A. I do not know why she's called. . .</p> <p>15 Q. Okay. The -- so let's look at the</p> <p>16 spreadsheet that was attached to the e-mail, and --</p> <p>17 and let's look at the first tab, the one that says</p> <p>18 "Plain Green high-level discussion of daily</p> <p>19 movement." And -- and what I want to ask you is</p> <p>20 just if -- if this is something that you have any</p> <p>21 knowledge of. I mean, is there an account -- or was</p> <p>22 there an account at that point in time called the</p> <p>23 "Plain Green purchasing account"?</p> <p>24 A. In -- in the purchasing -- the Plain Green</p> <p>25 "purchasing account" and "funding account" were used</p>	<p style="text-align: right;">Page 55</p> <p>1 for each one of the tribal entities called a</p> <p>2 "collections account"?</p> <p>3 A. Yes, sir.</p> <p>4 Q. And there -- at this point in time, there</p> <p>5 was an ACH provider named Intercept; is that</p> <p>6 correct?</p> <p>7 A. Which year are we going?</p> <p>8 Q. Well, do you remember when there was --</p> <p>9 A. Yes, I do remember Intercept, yes.</p> <p>10 Q. So presumably, if -- if Linda is explaining</p> <p>11 to people at Plain Green about how it works, this</p> <p>12 was at a time when Intercept was the provider,</p> <p>13 right?</p> <p>14 A. Yes.</p> <p>15 MR. SHELDON: Object to form.</p> <p>16 BY MR. ACKELSBURG:</p> <p>17 Q. You understand that, right?</p> <p>18 A. Yes, Intercept was the provider at that</p> <p>19 time.</p> <p>20 Q. Okay. And -- and then GPLS is the -- and</p> <p>21 you remember that GPLS was the entity that purchased</p> <p>22 participations in the loan that Plain Green</p> <p>23 originated? You remember that, right?</p> <p>24 A. Yes, sir.</p> <p>25 Q. And that was true of Mobiloans and Great</p>
<p style="text-align: right;">Page 54</p> <p>1 interchangeably. So I don't know if she -- in my</p> <p>2 shop, it would be the "funding account," and I -- I</p> <p>3 don't know if L2 switched it to "purchasing" for</p> <p>4 this process.</p> <p>5 Q. Okay. So you know of a funding account?</p> <p>6 A. Uh-huh (affirmative response).</p> <p>7 Q. And would there be a Plain Green funding</p> <p>8 account?</p> <p>9 A. Yes. Plain Green owned, yes.</p> <p>10 Q. And would there be a Plain Green</p> <p>11 collections account?</p> <p>12 A. Yes.</p> <p>13 Q. Okay. And would the same be true of the</p> <p>14 other two tribal entities, Mobiloans --</p> <p>15 A. Yes.</p> <p>16 Q. -- and Great Plains Lending?</p> <p>17 A. Yes.</p> <p>18 Q. Okay. And so there is -- for each one of</p> <p>19 the tribes, there was a bank account in the name of</p> <p>20 that tribal entity that was used to fund</p> <p>21 originations of customer loans?</p> <p>22 A. (Nods head affirmatively.)</p> <p>23 Q. You've got to say "yes" or "no."</p> <p>24 A. Yes, sir.</p> <p>25 Q. And similarly, there was a second account</p>	<p style="text-align: right;">Page 56</p> <p>1 Plains Lending as well, correct?</p> <p>2 A. Yes, sir.</p> <p>3 Q. Okay. And -- and so let's just see if in</p> <p>4 the next -- you know, in the next part of the -- of</p> <p>5 the exhibit, whether you also agree that -- the way</p> <p>6 that the -- that Linda describes the funding of</p> <p>7 loans and then the collections of loan. So she says</p> <p>8 first, "Cash is transferred from the Plain Green" --</p> <p>9 and I'll use the term "funding account" -- "to an</p> <p>10 account at Intercept." Was that the way it worked?</p> <p>11 MR. SHELDON: For the record, the</p> <p>12 document says "Plain Green purchasing account."</p> <p>13 MR. ACKELSBURG: I know. Right.</p> <p>14 A. We called it "funding account" --</p> <p>15 BY MR. ACKELSBURG:</p> <p>16 Q. Right.</p> <p>17 A. -- just in -- in layman's terms.</p> <p>18 Yes, that is how it worked.</p> <p>19 Q. And then, "Intercept processed the nightly</p> <p>20 delivered ACH file to fund approved customer loans,"</p> <p>21 correct?</p> <p>22 A. Yes.</p> <p>23 Q. And then, "Two days after origination of</p> <p>24 those loans, GPLS purchased a 99 percent</p> <p>25 participation in those loans by transferring cash to</p>

<p style="text-align: right;">Page 57</p> <p>1 the Plain Green" -- and I'll say "funding account." 2 Right? 3 A. That is correct. 4 Q. Okay. And if I substituted "Mobiloans" or 5 "Great Plains Lending" for "Plain Green" in this, it 6 would -- it would be an accurate description of the 7 way it worked as regarding -- as regards to those 8 other tribal entities, correct? 9 MR. SHELDON: Object to form. 10 A. They -- they had -- their agreements -- in 11 accordance with their agreements, but they were very 12 similar. Yes, sir. 13 BY MR. ACKELSBURG: 14 Q. And then if we move to the collections 15 side, every night Intercept processed -- well, 16 delivered an ACH file to collect the payments from 17 customers, right? 18 A. The loan management system sent an ACH file 19 for Intercept to process to collect payments from 20 the customer. 21 Q. Okay. So there would be a -- a data 22 transmission from Think Finance to Intercept which 23 would then trigger Intercept going into the customer 24 accounts and pulling out the appropriate payments? 25 A. Systemically, that is how it worked, yes.</p>	<p style="text-align: right;">Page 59</p> <p>1 A. The next -- the flowchart or my -- the 2 next -- 3 Q. Yeah. Flip the page now. 4 A. I've got -- 5 Q. Let's go to -- you don't have it? 6 A. I do. It's the third page. 7 Q. I meant the -- it's called -- it's called 8 "Tab 2" on it. Do you see -- I wrote that "Tab 2." 9 A. Oh, okay. 10 MR. SHELDON: For the record, the 11 third page of the native document has "Tab No. 2," 12 language I can't read, written in the upper 13 right-hand corner. 14 MR. ACKELSBURG: That's my initials, 15 just to make clear that I wrote that. So -- and it 16 corresponds with the tab on the -- on the screenshot 17 that we -- we -- that's a few pages before that. Do 18 you see that? Matt, do you -- I want to make sure 19 that you. . . 20 MR. SHELDON: Yes. 21 MR. ACKELSBURG: I want to make sure 22 that it's clear to you. 23 MR. SHELDON: Yeah. Okay. Good. 24 BY MR. ACKELSBURG: 25 Q. So Tab No. 2 has a flowchart.</p>
<p style="text-align: right;">Page 58</p> <p>1 Q. Okay. And then Intercept would hold the 2 collected funds for four days to ensure that the 3 majority of returns were processed, right? 4 A. That is correct. 5 Q. Okay. And then after four days, Intercept 6 would remit those collected funds to the Plain Green 7 collections account, right? 8 A. That is correct. 9 Q. Or if we're talking about Mobiloans, it 10 would be the Mobiloans collection account? 11 A. Yes, sir. 12 Q. Or the Plain Green -- or the Great Plains 13 Lending account? 14 A. Yeah. 15 Q. Okay. And then the -- and then Plain Green 16 would transfer 99 percent of those collections out 17 of that account to GPLS, right? 18 A. That is correct. 19 Q. Okay. So -- so this is an accurate 20 description of how the money flowed in the system 21 that you're -- you're familiar with, right? 22 A. Yes. 23 Q. Okay. Now, the second page is a flowchart, 24 and it -- it looks like to me it -- well, why don't 25 you look at it.</p>	<p style="text-align: right;">Page 60</p> <p>1 A. Yes, sir. 2 Q. And did -- was it -- were there -- if 3 you've never -- you know, maybe you've seen this 4 flowchart or maybe you -- have you -- have you ever 5 seen this particular flowchart? 6 A. Yes, I have. 7 Q. Oh, you have? Okay. So where did -- tell 8 me what you -- what you remember about this 9 flowchart. Where did it come from? Who made it? 10 A. I would say I made it. 11 Q. Oh. Great. Okay. So this is a document 12 you created? 13 A. Yes. 14 Q. Okay. And so would it -- would I be 15 correct in saying that this is a sort of visual 16 presentation of what was described in words in the 17 previous tab, in the -- in the previous picture, 18 that you're trying to put a -- make a flowchart that 19 sort of shows what we were just looking at? 20 MR. SHELDON: Objection. The previous 21 tab -- oh, I'm sorry. I see what you were doing 22 here now, that the previous tab was -- sorry. You 23 can continue. If you want to read back the question 24 or otherwise proceed, that's fine. 25 MR. ACKELSBURG: I think -- I think</p>

<p style="text-align: right;">Page 61</p> <p>1 the witness knows.</p> <p>2 A. It is a flow that describes this -- and I</p> <p>3 want to say between here and here, what is going on.</p> <p>4 BY MR. ACKELSBURG:</p> <p>5 Q. Okay. So you're pointing to -- there's a</p> <p>6 column, you see it says --</p> <p>7 A. That says "Think Finance Systems."</p> <p>8 Q. Yes. And under that, it says "ACH."</p> <p>9 A. Yeah. And that -- that column, and then</p> <p>10 what is going on over on the right, the column into</p> <p>11 the -- the collection account for -- at Citibank.</p> <p>12 Q. Where it says GPL Servicing, LTD, and then</p> <p>13 "Purchase Account" and "Collections" and --</p> <p>14 A. Yeah.</p> <p>15 Q. -- "Maintenance" and all that?</p> <p>16 A. Yeah.</p> <p>17 Q. Okay. So when -- when the 99 percent of</p> <p>18 collections from tribal entity's collection account</p> <p>19 would be transferred to GPLS, that would go to an</p> <p>20 account at Citibank, correct?</p> <p>21 A. Correct.</p> <p>22 Q. And all of the various GPL -- GPLS accounts</p> <p>23 were at Citibank, right?</p> <p>24 A. To the best of my knowledge, yes.</p> <p>25 Q. And the tribal accounts were at different</p>	<p style="text-align: right;">Page 63</p> <p>1 how the tribe got their money. The funding account</p> <p>2 would have enough in it to send to the ACH processor</p> <p>3 to cover the files that were forecasted. We</p> <p>4 forecast the amount of the files. And that's where</p> <p>5 it was picked up from there.</p> <p>6 Q. And 99 percent of those funds came from</p> <p>7 GPLS?</p> <p>8 A. And those came -- came back into that</p> <p>9 account from GPLS.</p> <p>10 MR. SHELTON: Object to form. I think</p> <p>11 you two are actually crossing -- talking across each</p> <p>12 other. She's talking about an event after the</p> <p>13 funding, and you're talking about an event before</p> <p>14 the funding.</p> <p>15 BY MR. ACKELSBURG:</p> <p>16 Q. Why don't -- is that correct?</p> <p>17 A. Which part?</p> <p>18 Q. What your lawyer just said. I'm sorry.</p> <p>19 A. Probab- -- probably.</p> <p>20 Q. Probably. All right.</p> <p>21 So let's -- let's do it my way. So</p> <p>22 99 percent of the money to fund loans that</p> <p>23 ultimately ends up at the ACH provider is</p> <p>24 effectively coming from GPLS, right?</p> <p>25 MR. SHELTON: Object to form.</p>
<p style="text-align: right;">Page 62</p> <p>1 banks, right?</p> <p>2 A. Yes, sir.</p> <p>3 Q. And the -- the Think Finance finance people</p> <p>4 were authorized to move money in and out of the GPLS</p> <p>5 accounts at Citibank, some -- some of those</p> <p>6 accounts, correct?</p> <p>7 MR. SHELTON: Object to form.</p> <p>8 A. The Think Finance -- some of the accounts,</p> <p>9 yes.</p> <p>10 BY MR. ACKELSBURG:</p> <p>11 Q. Now, 99 percent of the loan fundings came</p> <p>12 from the -- a GPLS account at Citibank, right?</p> <p>13 MR. SHELTON: Object to form.</p> <p>14 A. The funds came -- yes. If GPL purchased</p> <p>15 their participations, yes.</p> <p>16 BY MR. ACKELSBURG:</p> <p>17 Q. Where did the other 1 percent come from?</p> <p>18 A. The tribe would have to -- that would be</p> <p>19 from the tribe.</p> <p>20 Q. Okay. Well, let's look at your chart that</p> <p>21 you prepared. And what it looks like, and correct</p> <p>22 me if I'm wrong, that the 1 percent comes from</p> <p>23 something called the Haynes Investment account?</p> <p>24 A. I know very little about the Haynes</p> <p>25 Investment account. So I don't -- I can't speak to</p>	<p style="text-align: right;">Page 64</p> <p>1 A. A hundred percent of the loan funding has</p> <p>2 to be at the ACH provider to cover the file.</p> <p>3 BY MR. ACKELSBURG:</p> <p>4 Q. Right. And -- and you have to -- or</p> <p>5 treasury -- somebody at Think Finance has to make</p> <p>6 sure that they have a hundred percent?</p> <p>7 A. We monitor that as a service.</p> <p>8 Q. Okay.</p> <p>9 A. Correct. To make sure the tribes got</p> <p>10 their --</p> <p>11 Q. And would that be your job or -- to monitor</p> <p>12 that?</p> <p>13 A. No. That was treasury.</p> <p>14 Q. That would be treasury. Okay. So treasury</p> <p>15 would have to make sure that a hundred percent of</p> <p>16 the loan fundings was in the hands of the ACH</p> <p>17 provider?</p> <p>18 A. (Nods head affirmatively.)</p> <p>19 Q. And they'd have to effectively predict how</p> <p>20 much the ACH provider would need, right?</p> <p>21 A. It would be a forecast, yes.</p> <p>22 Q. Okay. And then after the fact, there's --</p> <p>23 there's a reconciling, right?</p> <p>24 A. Yes, sir.</p> <p>25 Q. Okay. And 99 percent of the funds that</p>

<p style="text-align: right;">Page 65</p> <p>1 were put out eventually gets replenished by GPLS?</p> <p>2 MR. SHELDON: Object to form.</p> <p>3 A. They were purchased by GPLS, the</p> <p>4 participation.</p> <p>5 BY MR. ACKELSBURG:</p> <p>6 Q. But in terms of the -- in terms of the flow</p> <p>7 of money, though, you're basically replenishing the</p> <p>8 money that was put out to -- in the few fundings,</p> <p>9 right?</p> <p>10 A. The funds were transferred back into the</p> <p>11 purchasing account when they purchased --</p> <p>12 Q. Right.</p> <p>13 MR. SHELDON: Object to form back on</p> <p>14 that prior question.</p> <p>15 BY MR. ACKELSBURG:</p> <p>16 Q. And then the 1 percent, the tribe -- the</p> <p>17 tribal portion of -- of the loans that were -- that</p> <p>18 were made, are -- do you remember an account called</p> <p>19 Haynes Investment? I mean, you -- you did this --</p> <p>20 you --</p> <p>21 A. I -- that --</p> <p>22 MR. SHELDON: Object to form.</p> <p>23 A. I -- I don't know of an account called</p> <p>24 Haynes Investment. I just knew that a Haynes</p> <p>25 Investment existed, and I put an account there.</p>	<p style="text-align: right;">Page 67</p> <p>1 that may or could happen. I am unaware if that ever</p> <p>2 happened.</p> <p>3 Q. Okay. And who instructed you so, in that</p> <p>4 fashion?</p> <p>5 A. That would have been someone more familiar</p> <p>6 with it, which would have been Linda.</p> <p>7 Q. Okay. Now, some customers made their</p> <p>8 payments -- well, let me ask you this: Do you know</p> <p>9 how many -- what percentage of customers paid via</p> <p>10 ACH?</p> <p>11 A. Almost all customers.</p> <p>12 Q. Almost all?</p> <p>13 MR. SHELDON: I need a break soon. So</p> <p>14 if you're done with the document -- we can take it</p> <p>15 whenever you want, but in the next five minutes.</p> <p>16 MR. ACKELSBURG: We can -- we can</p> <p>17 break now. That will be fine.</p> <p>18 MR. SHELDON: Great.</p> <p>19 THE VIDEOGRAPHER: We are off the</p> <p>20 record. The time is 10:21 a.m.</p> <p>21 (Break taken, 10:21 a.m. to 10:34 a.m.)</p> <p>22 THE VIDEOGRAPHER: We are back on the</p> <p>23 record. The time is 10:34 a.m.</p> <p>24 BY MR. ACKELSBURG:</p> <p>25 Q. Ms. Callnin, what's your understanding of</p>
<p style="text-align: right;">Page 66</p> <p>1 BY MR. ACKELSBURG:</p> <p>2 Q. And did you know that that -- that money</p> <p>3 for the 1 percent came from that account?</p> <p>4 A. I do not know if that came there.</p> <p>5 Q. Okay. Okay. We'll ask --</p> <p>6 A. That's going to be out of my --</p> <p>7 Q. That would be --</p> <p>8 COURT REPORTER: I'm sorry, your</p> <p>9 answer?</p> <p>10 A. I do not know that. . .</p> <p>11 BY MR. ACKELSBURG:</p> <p>12 Q. That was someone else's responsibility?</p> <p>13 A. Yeah.</p> <p>14 Q. And most likely, Linda Rogenski? Linda</p> <p>15 Rogenski?</p> <p>16 A. She might be more familiar with it.</p> <p>17 Q. Okay. We'll -- we'll ask her.</p> <p>18 There's a line to the left, you see,</p> <p>19 between "Haynes Investment Account" and then the</p> <p>20 "Plain Green Funding Account," it says "Excess</p> <p>21 estimate swept to Haynes Investment." Do you see</p> <p>22 that?</p> <p>23 A. I see it.</p> <p>24 Q. Do you know what it means?</p> <p>25 A. I was instructed that that is something</p>	<p style="text-align: right;">Page 68</p> <p>1 what GPLS was?</p> <p>2 A. An investor.</p> <p>3 Q. Okay. And was there -- I mean, did GPLS</p> <p>4 have employees? Was it a person? I mean, what was --</p> <p>5 MR. SHELDON: Object to form.</p> <p>6 BY MR. ACKELSBURG:</p> <p>7 Q. What did you -- what was your understanding</p> <p>8 of what GPLS -- what -- what was the nature of GPLS?</p> <p>9 A. That they were an investor.</p> <p>10 Q. And who was "they"?</p> <p>11 A. Whatever company was behind GP- -- or what</p> <p>12 persons or whatever that were behind.</p> <p>13 Q. And did you know the -- did you know that --</p> <p>14 the persons behind GPLS at all?</p> <p>15 A. No.</p> <p>16 MR. SHAPIRO: Object to form.</p> <p>17 BY MR. ACKELSBURG:</p> <p>18 Q. Did you have any interaction with anyone</p> <p>19 from Victory Park Capital at all?</p> <p>20 A. Only in e-mails every now and then.</p> <p>21 Q. But you never met any of those people?</p> <p>22 A. Did not, no, sir.</p> <p>23 Q. Okay. What was your understanding of what</p> <p>24 the Universal Fund was?</p> <p>25 A. Oh, I do not recall.</p>

<p style="text-align: right;">Page 69</p> <p>1 Q. Well, do you remember if it was an 2 investor? 3 A. I don't remember. 4 Q. Okay. 5 A. I don't remember. 6 Q. Do you remember First Bank of Delaware? 7 A. I remember First Bank of Delaware, yes, 8 sir. 9 Q. And what -- what do you remember about 10 First Bank of Delaware? What was their role, that 11 you remember? 12 A. That they -- 13 MR. SHELDON: Object to form. 14 A. That they were a partner. Similar to the 15 tribes. 16 BY MR. ACKELSBURG: 17 Q. Okay. So there -- and did the accounting 18 work similarly back in those days, that there would 19 be a portion of the funding that was replenished by -- 20 A. A participation purchaser. 21 Q. -- a participation purchaser, right? 22 A. Yes. 23 Q. And might that have been the Universal Fund 24 back then? 25 MR. SHELDON: Object to form.</p>	<p style="text-align: right;">Page 71</p> <p>1 A. Only the transition, not the mechanics 2 behind it. 3 BY MR. ACKELSBURG: 4 Q. Okay. But you remember the -- you remember 5 the transition? You remember -- you remember it 6 happening? 7 A. I remember it happening, yes. 8 Q. Okay. And do you remember at the time that 9 it happened, for a while, First Bank of Delaware was 10 still handling the ACH processing? 11 MR. SHELDON: Object to form. 12 BY MR. ACKELSBURG: 13 Q. Or somebody that they -- that they hired? 14 A. Yeah, I -- I see a debit and credit in the 15 checking account. If First Bank of Delaware was the 16 ACH provider or they outsourced it, I don't know. 17 Q. But they did one or the other in the 18 beginning? 19 A. They could have, yes. 20 Q. Okay. Are you aware that each of the 21 tribal entities were charged fees by Tailwind and by 22 TC Decision Sciences? 23 MR. SHELDON: Object to form. 24 A. I was aware that the agreements had fees 25 that were being charged back and forth.</p>
<p style="text-align: right;">Page 70</p> <p>1 A. I don't -- I don't know. 2 BY MR. ACKELSBURG: 3 Q. You don't remember? 4 A. No. 5 Q. Okay. 6 A. I don't remember. 7 Q. And First Bank of -- was First Bank of 8 Delaware providing other services back then as well? 9 MR. SHELDON: Object to form. 10 A. Clarify what "other services" are. 11 BY MR. ACKELSBURG: 12 Q. Am I right that before Intercept was your 13 ACH provider, First Bank of Delaware was an ACH 14 provider? 15 A. They -- I don't know if they provided it 16 themselves or outsourced it. I do not know. 17 Q. But do you remember when Intercept first 18 started? 19 MR. SHELDON: Object to form. 20 A. Not the exact date, but. . . 21 BY MR. ACKELSBURG: 22 Q. Well, let's -- let's go back to the point -- 23 do you remember the transition from First Bank of 24 Delaware to the tribal entities? 25 MR. SHELDON: Object to form.</p>	<p style="text-align: right;">Page 72</p> <p>1 BY MR. ACKELSBURG: 2 Q. Okay. And was someone in finance 3 responsible for paying those fees? 4 MR. SHELDON: Object to form. 5 BY MR. ACKELSBURG: 6 Q. Or for invoicing those fees, or any -- any 7 activity with regard to those fees? 8 MR. SHELDON: Object to form. 9 A. The -- there was -- yes. To my knowledge, 10 yes. 11 BY MR. ACKELSBURG: 12 Q. And -- and am I right that that was done on 13 a monthly basis? 14 A. In accordance with the agreements. 15 Q. Which agreements are you referring to? The 16 participation agreements? Or. . . 17 A. The participation or servicing agreements 18 or whatever agreements they had. 19 Q. Okay. And so which -- which team within 20 finance prepared the invoices? 21 A. That's going to be under L2. 22 Q. Linda Rogenski -- 23 A. Linda Rogenski. 24 Q. -- would do that? 25 A. Yeah.</p>

<p style="text-align: right;">Page 73</p> <p>1 Q. Okay. And which team would be responsible</p> <p>2 for the accounting with regard to those -- to those</p> <p>3 fees, any payments connected to those fees?</p> <p>4 MR. SHELDON: Object to form.</p> <p>5 BY MR. ACKELSBURG:</p> <p>6 Q. Or transfers connected to those fees?</p> <p>7 MR. SHELDON: Object to -- object to</p> <p>8 form.</p> <p>9 A. It -- it would be the treasury in</p> <p>10 conjunction with that, you know --</p> <p>11 BY MR. ACKELSBURG:</p> <p>12 Q. So the treasury would -- would facilitate</p> <p>13 whatever transfers were required, right?</p> <p>14 A. Uh-huh (affirmative response).</p> <p>15 Q. Now, am I right that your team, though,</p> <p>16 occasionally would approve -- would have some</p> <p>17 approval function with -- with regard to the</p> <p>18 transfers?</p> <p>19 A. Only as --</p> <p>20 MR. SHELDON: Object to form.</p> <p>21 A. Only as backup.</p> <p>22 BY MR. ACKELSBURG:</p> <p>23 Q. Okay. Who -- if -- who was the primary</p> <p>24 approving person or team within -- in that -- who --</p> <p>25 so treasury would prepare a wire transfer with</p>	<p style="text-align: right;">Page 75</p> <p>1 have a confidentiality stamp on it.</p> <p>2 MR. ACKELSBURG: And just to be clear,</p> <p>3 I did the copying -- the preparation of this --</p> <p>4 Mr. Sheldon, I did the copying of this -- or the</p> <p>5 preparation of this exhibit in the same way that I</p> <p>6 did the one that we were looking at before, you</p> <p>7 know, the previous exhibit, where, after -- after</p> <p>8 I've copied the -- the page that has the</p> <p>9 "Confidential" stamp on it that says "Produced in</p> <p>10 Native Format," I then -- I then produced -- I then</p> <p>11 created a copy of the image of what you see when you</p> <p>12 download the native file, and -- and then -- and</p> <p>13 then the subsequent pages are the various tabs that</p> <p>14 are listed at the bottom of that Excel sheet. Okay?</p> <p>15 Just so you understand what I've done there.</p> <p>16 MR. SHELDON: I -- I believe I do.</p> <p>17 MR. ACKELSBURG: Okay. Thank you.</p> <p>18 MR. GROGAN: For the record, Matt, for</p> <p>19 the rest of the deposition, when he says he did it</p> <p>20 that way, the way he just said, that's how we did</p> <p>21 it, so he doesn't have to explain it each time.</p> <p>22 BY MR. ACKELSBURG:</p> <p>23 Q. All right. So what I think I'm showing you</p> <p>24 is the invoicing for the Tailwind and TCDS charges</p> <p>25 for August of 2013. And why don't you look through</p>
<p style="text-align: right;">Page 74</p> <p>1 regard to the Tailwind or TCDS fee, right?</p> <p>2 A. (Nods head affirmatively.)</p> <p>3 Q. And somebody --</p> <p>4 A. Yes, sir.</p> <p>5 Q. Somebody would have to approve that before</p> <p>6 the wire would actually -- the wires would actually</p> <p>7 hit, right?</p> <p>8 A. That's correct, sir.</p> <p>9 Q. And who was the primary approving party?</p> <p>10 A. Primary would be Linda Rogenski or Badr</p> <p>11 Qureshi. I was, like, backup for them.</p> <p>12 Q. Okay. And if they weren't available, then</p> <p>13 you would be the one --</p> <p>14 A. Yes.</p> <p>15 Q. -- who would approve those?</p> <p>16 A. Yeah.</p> <p>17 Q. Okay. Well, I want to -- we're going to</p> <p>18 look at one where I think you had some role.</p> <p>19 MR. ACKELSBURG: So why don't we turn</p> <p>20 to Document 27, P-27.</p> <p>21 (Exhibit No. 27 marked.)</p> <p>22 MR. SHELDON: For the record,</p> <p>23 Document 27 appears to be an e-mail with an</p> <p>24 attachment. The e-mail does not have a</p> <p>25 confidentiality stamp on it, but the attachment does</p>	<p style="text-align: right;">Page 76</p> <p>1 it and tell me if I -- 2012, I'm sorry. I had the</p> <p>2 wrong year. So we're looking at an e-mail from</p> <p>3 September of 2012, and I think it's attaching</p> <p>4 invoices for the -- the August of 2012 billing. Do</p> <p>5 you see that?</p> <p>6 A. I see, yes, sir.</p> <p>7 Q. And you're actually included in the e-mail.</p> <p>8 You see that, right?</p> <p>9 A. Yes, sir.</p> <p>10 Q. And was that common that you would be CC'd</p> <p>11 in -- in the monthly invoicing like this?</p> <p>12 A. Yes. Yes, sir.</p> <p>13 Q. Okay. So this was part of the standard</p> <p>14 procedure?</p> <p>15 A. Yes, sir.</p> <p>16 Q. Okay. Now, why don't you turn to the</p> <p>17 invoices. First of all -- yeah, okay, let's turn to</p> <p>18 the invoices and let me ask you -- and we're looking</p> <p>19 at just -- we're looking at Great Plains here,</p> <p>20 right?</p> <p>21 A. Yes, sir.</p> <p>22 Q. Who -- what was the standard practice in</p> <p>23 terms of preparation of these invoices? Who would</p> <p>24 do that?</p> <p>25 A. Someone --</p>

<p style="text-align: right;">Page 77</p> <p>1 MR. SHELDON: Object to form.</p> <p>2 A. They were prepared by someone in Linda</p> <p>3 Rogenski's group.</p> <p>4 BY MR. ACKELSBURG:</p> <p>5 Q. Okay. So Linda Rogenski would prepare --</p> <p>6 and let's just walk through this. So the first</p> <p>7 document -- the first invoice we see is an invoice</p> <p>8 from Tailwind Marketing, billed to Great Plains</p> <p>9 Lending, right?</p> <p>10 A. Yes, sir.</p> <p>11 Q. And that's the marketing fee that was being</p> <p>12 billed pursuant to the agreement between Tailwind</p> <p>13 Marketing and Great Plains, correct?</p> <p>14 A. To the best of my knowledge, yes.</p> <p>15 Q. Okay. And this is a bill for \$661,400,</p> <p>16 correct?</p> <p>17 A. Yes, sir.</p> <p>18 Q. Okay. And then the next invoice, am I</p> <p>19 right, is for the same amount, the same \$661,400,</p> <p>20 which is billed by Great Plains Lending to GPLS, and</p> <p>21 this is for reimbursement of the same fee, correct?</p> <p>22 A. It -- I -- I -- in -- it is done in</p> <p>23 accordance with the agreement. If the intent was</p> <p>24 reimbursement, it's -- whatever the agreement says.</p> <p>25 Q. Okay. I don't mean to -- I don't mean</p>	<p style="text-align: right;">Page 79</p> <p>1 tribal entity, and then a bill in the same amount</p> <p>2 going from the tribal entity to GPLS?</p> <p>3 A. I --</p> <p>4 MR. SHELDON: Object to form.</p> <p>5 A. I don't know that all the other tribes were</p> <p>6 set up with the exact same agreements. Each tribe</p> <p>7 has its own set of agreements. Mechanically, it may</p> <p>8 not have been done the same way.</p> <p>9 BY MR. ACKELSBURG:</p> <p>10 Q. And you don't remember if mechanically</p> <p>11 there were -- there were simultaneous invoices?</p> <p>12 A. They -- they --</p> <p>13 Q. I'm not asking for the amount of the -- I'm</p> <p>14 not asking you to -- to remember the amount of fee</p> <p>15 paid by Plain Green, for example. But am I right</p> <p>16 that on a monthly basis, there would be similarly</p> <p>17 for Plain Green, a -- this sort of double invoicing</p> <p>18 for whatever the Tailwind fee was?</p> <p>19 MR. SHELDON: Object to form; asked</p> <p>20 and answered.</p> <p>21 BY MR. ACKELSBURG:</p> <p>22 Q. Go ahead. You can answer now.</p> <p>23 A. I don't guarantee that the -- this is the</p> <p>24 Great Plains agreement and how it was done. I -- I</p> <p>25 don't remember off the top of my head if Plain Green</p>
<p style="text-align: right;">Page 78</p> <p>1 to -- the -- I don't -- I don't need you to</p> <p>2 characterize it. You're just talking about -- we're</p> <p>3 just talking about money flows here, right?</p> <p>4 A. Yeah.</p> <p>5 Q. That's what you know?</p> <p>6 A. Yes, that's what I know.</p> <p>7 Q. Okay. So a bill would -- would go from</p> <p>8 Tailwind to Great Plains Lending in -- in a certain</p> <p>9 amount, and simultaneously, a bill for the same</p> <p>10 amount would go from Great Plains Lending to GPLS?</p> <p>11 MR. SHELDON: Object to form.</p> <p>12 BY MR. ACKELSBURG:</p> <p>13 Q. Right?</p> <p>14 A. Yes, sir.</p> <p>15 Q. Okay. And that was the standard practice?</p> <p>16 A. If that's what the agreement said.</p> <p>17 Q. Done every month?</p> <p>18 A. That's what was done, yes, sir.</p> <p>19 Q. And -- and it would be done the same way</p> <p>20 for the other tribal entities as well, in accordance</p> <p>21 with their agreements?</p> <p>22 A. Whatever their agreements said --</p> <p>23 Q. That would be --</p> <p>24 A. -- would be done.</p> <p>25 Q. -- one bill going from Tailwind to the</p>	<p style="text-align: right;">Page 80</p> <p>1 or Mobil were done in the exact same manner.</p> <p>2 Q. Okay. All right. But we're looking at</p> <p>3 Great Plains Lending.</p> <p>4 A. That's what we're looking at.</p> <p>5 Q. And this is the way it was done with Great</p> <p>6 Plains -- and you're confident this is the way it</p> <p>7 was done with Great Plains Lending?</p> <p>8 MR. SHELDON: Object to form.</p> <p>9 A. To what I know of, this is what was done.</p> <p>10 BY MR. ACKELSBURG:</p> <p>11 Q. Okay. And then let's turn to the next --</p> <p>12 the next two invoices. Now we're -- now we're</p> <p>13 dealing with the monthly license and support fee</p> <p>14 that TC Decision Sciences would bill to Great</p> <p>15 Plains, right? And then -- and that's in the amount</p> <p>16 of \$330,700, right?</p> <p>17 A. Correct.</p> <p>18 Q. And there is an invoice in the exact same</p> <p>19 amount from -- going a different direction, from</p> <p>20 Great Plains Lending to GPL Servicing, right?</p> <p>21 A. Yes, sir.</p> <p>22 Q. And both of these invoices would have been</p> <p>23 prepared by Linda Rogenski's team?</p> <p>24 A. Correct.</p> <p>25 Q. And then the third set of invoices are for</p>

<p style="text-align: right;">Page 81</p> <p>1 a different TC Decision Sciences fee called the</p> <p>2 "servicing fee," right?</p> <p>3 A. Correct.</p> <p>4 Q. And this works the same way, a simultaneous</p> <p>5 invoice from TC Decision Sciences to Great Plains,</p> <p>6 and then an invoice for the same amount on the same</p> <p>7 day going from Great Plains Lending to GPLS, right?</p> <p>8 A. Correct.</p> <p>9 Q. Okay. And then there's a final -- a final</p> <p>10 invoice. And this is called a service fee, and this</p> <p>11 is Great Plains Lending billing GPL -- GPLS, right?</p> <p>12 A. Correct.</p> <p>13 Q. And -- and what are we looking at here?</p> <p>14 A. This -- as a service to Great Plains, we</p> <p>15 prepare the invoice for them, but it's -- the</p> <p>16 contract -- the description up in the right-hand</p> <p>17 corner was meant to be the description of the</p> <p>18 transaction in accordance with the contract. So. . .</p> <p>19 Q. Do you remember -- do you remember the</p> <p>20 concept called "revenue share"?</p> <p>21 A. I do.</p> <p>22 Q. Okay. Are we looking at revenue share?</p> <p>23 A. We could be.</p> <p>24 Q. What do you mean "we could be"? Are we or</p> <p>25 aren't we?</p>	<p style="text-align: right;">Page 83</p> <p>1 Q. Right. That's the 99 percent --</p> <p>2 A. Correct.</p> <p>3 Q. -- correct?</p> <p>4 Okay. And then of that, it looks -- it</p> <p>5 looks like Plain Green -- or Great Plains Lending</p> <p>6 was paid 9 percent of that, correct?</p> <p>7 A. Correct.</p> <p>8 Q. Okay. And that's what you understood to be</p> <p>9 revenue share, right?</p> <p>10 A. Correct.</p> <p>11 Q. Okay. You -- what you're not -- what</p> <p>12 you're not sure of is whether revenue share in the</p> <p>13 contracts was called "service fee"?</p> <p>14 A. Correct.</p> <p>15 Q. Okay. Now, am I right that Plain Green</p> <p>16 also was paid a revenue share of a -- of some</p> <p>17 amount, of some percentage?</p> <p>18 MR. SHELDON: Object to form.</p> <p>19 A. I believe -- I believe so. That's -- yes.</p> <p>20 BY MR. ACKELSBURG:</p> <p>21 Q. And do you -- do you recall the four and a</p> <p>22 half percent number?</p> <p>23 A. There -- possibly.</p> <p>24 Q. Okay. And Mobiloans was also paid a</p> <p>25 revenue share out of the 99 percent of collections?</p>
<p style="text-align: right;">Page 82</p> <p>1 A. Well, I -- well, it -- it could be revenue</p> <p>2 share, but it was called "service fee" --</p> <p>3 Q. Well, I know, but --</p> <p>4 A. -- in the contract.</p> <p>5 Q. And is it possible -- so it's possible that</p> <p>6 the contract referred to the revenue share as</p> <p>7 "service fee"?</p> <p>8 MR. SHELDON: Object to form.</p> <p>9 A. That -- that could be possible.</p> <p>10 BY MR. ACKELSBURG:</p> <p>11 Q. Okay. Well, looking at the calculation</p> <p>12 that was done, do you see --</p> <p>13 A. Uh-huh (affirmative response).</p> <p>14 Q. -- it's the amount of loan fees collected,</p> <p>15 less return fees. Do you see that?</p> <p>16 A. Yes, sir.</p> <p>17 Q. And there's a net fee collected?</p> <p>18 A. Uh-huh (affirmative response).</p> <p>19 Q. And when we're talking about net fees</p> <p>20 collected, we're talking about the GPLS portion, the</p> <p>21 99 percent, right?</p> <p>22 MR. SHELDON: Object to form.</p> <p>23 A. The -- that is the gross amount, the 5365.</p> <p>24 The GPLS portion is 5311.</p> <p>25 BY MR. ACKELSBURG:</p>	<p style="text-align: right;">Page 84</p> <p>1 A. If that's --</p> <p>2 MR. SHELDON: Object to form.</p> <p>3 A. If that's what was in their contract, yes.</p> <p>4 BY MR. ACKELSBURG:</p> <p>5 Q. Okay. And that might have been 4 percent?</p> <p>6 Does that sound familiar?</p> <p>7 A. Four, four and a half. They -- could be.</p> <p>8 I don't know which one's which --</p> <p>9 Q. Okay.</p> <p>10 A. -- without looking at the invoice.</p> <p>11 Q. But you do you recall that each one of the</p> <p>12 tribal entities were paid a percentage of GPLS's</p> <p>13 share of the collect -- the net collections?</p> <p>14 A. Yes, sir.</p> <p>15 Q. Okay. That you knew as revenue share, but</p> <p>16 might have been contractually referred to as</p> <p>17 "service fee"?</p> <p>18 A. Correct.</p> <p>19 Q. Okay. And then am I right that the</p> <p>20 treasury people would prepare wires that would</p> <p>21 transfer money consistent with the invoices that we</p> <p>22 were looking at?</p> <p>23 A. Yes, sir.</p> <p>24 Q. And that -- and that was done on a monthly</p> <p>25 basis?</p>

<p style="text-align: right;">Page 85</p> <p>1 A. Yes, sir.</p> <p>2 Q. And was that done for all tribes -- all of</p> <p>3 the tribal entities?</p> <p>4 A. Yes, sir.</p> <p>5 MR. ACKELSBURG: All right. Let's</p> <p>6 look at the next exhibit, 28.</p> <p>7 (Exhibit No. 28 marked.)</p> <p>8 MR. ACKELSBURG: And just to save some</p> <p>9 time, it's marked "Confidential." I mean, I don't</p> <p>10 know that we really need to do this on the record</p> <p>11 for every single document. But it's marked</p> <p>12 "Confidential."</p> <p>13 MR. SHELDON: I don't think that took</p> <p>14 too long.</p> <p>15 BY MR. ACKELSBURG:</p> <p>16 Q. Now, we're looking at the -- we're looking</p> <p>17 at some wire approvals that occurred on</p> <p>18 September 19th, correct, of 2012?</p> <p>19 A. Correct.</p> <p>20 Q. And -- and if you look at the Great Plains</p> <p>21 portion of the wires, we're looking at the Citibank</p> <p>22 wires. When we're talking about Citibank, we're</p> <p>23 talking about the GPLS accounts, correct?</p> <p>24 A. Correct.</p> <p>25 Q. And if you look at the GP wire, you see</p>	<p style="text-align: right;">Page 87</p> <p>1 tribal accounts -- to the -- to the G -- to the</p> <p>2 Great Plains Lending account?</p> <p>3 MR. SHELDON: Object to form.</p> <p>4 BY MR. ACKELSBURG:</p> <p>5 Q. Is that what we're looking at?</p> <p>6 A. I would have to see the wire transaction</p> <p>7 itself to see which way it was going.</p> <p>8 Q. Okay. But it's one of those two</p> <p>9 directions, right?</p> <p>10 A. Yes, sir.</p> <p>11 Q. Okay. Now, the procedure was that -- now,</p> <p>12 David Gentry, he worked for Badr Qureshi?</p> <p>13 A. In that time frame, I'm not sure if Badr. . .</p> <p>14 Q. Well, it looks like David Gentry is -- has</p> <p>15 prepared these wires, correct?</p> <p>16 A. Yeah. And he copied Badr on it, yes.</p> <p>17 Q. Yes. Okay.</p> <p>18 A. Okay.</p> <p>19 Q. And -- and he's -- and he's asking you,</p> <p>20 Linda I, for approval, right?</p> <p>21 A. Yes.</p> <p>22 Q. Okay. And that means that -- that someone</p> <p>23 else wasn't around?</p> <p>24 A. That's correct.</p> <p>25 Q. And -- and we're talking about with regard</p>
<p style="text-align: right;">Page 86</p> <p>1 it's \$1,187,285?</p> <p>2 A. Yes.</p> <p>3 Q. Okay. And if you need to calculate it,</p> <p>4 that's fine, or if -- if you know, is that</p> <p>5 \$1,187,285 the sum of the three invoices for</p> <p>6 Tailwind and TCDS that we were just looking at?</p> <p>7 MR. SHELDON: Object to form.</p> <p>8 A. Do you have a calculator that. . .</p> <p>9 BY MR. ACKELSBURG:</p> <p>10 Q. Sure.</p> <p>11 MR. SHELDON: Do you have a piece of</p> <p>12 paper she can do the calculations on?</p> <p>13 MR. ACKELSBURG: It's probably easier</p> <p>14 to do it on -- on my iPhone. So. . .</p> <p>15 MR. SHELDON: For the record, the</p> <p>16 witness is looking back at Document P-27 and is</p> <p>17 performing calculations of invoices discussed</p> <p>18 regarding that exhibit.</p> <p>19 A. That is correct.</p> <p>20 BY MR. ACKELSBURG:</p> <p>21 Q. So -- you can hold that exhibit. I'll just</p> <p>22 take my phone back. Okay. Thanks.</p> <p>23 So -- so we're basically looking at the</p> <p>24 wires that were prepared. Now, were these wires</p> <p>25 coming out of the Citibank account to the -- to the</p>	<p style="text-align: right;">Page 88</p> <p>1 to the -- to the Great Plains Lending invoice that</p> <p>2 we -- that we saw, that this could be a wire out</p> <p>3 of -- I mean, you wouldn't need to -- would you need</p> <p>4 to get approval for a wire into -- into the Citibank</p> <p>5 account?</p> <p>6 MR. SHELDON: Object to form.</p> <p>7 A. No. No. Incoming wires to --</p> <p>8 BY MR. ACKELSBURG:</p> <p>9 Q. Right.</p> <p>10 A. -- only -- only. . .</p> <p>11 Q. Right. So we're basically looking at the</p> <p>12 transfer of money that went from the Citibank GPLS</p> <p>13 account to Great Plains Lending for those three fees</p> <p>14 that we were -- that we were looking at in the</p> <p>15 previous exhibit, correct?</p> <p>16 MR. SHELDON: Object to form.</p> <p>17 A. To the best of my knowledge, yes, without</p> <p>18 looking at the debits and credits and the wire</p> <p>19 transfer.</p> <p>20 BY MR. ACKELSBURG:</p> <p>21 Q. Okay. When you -- when the finance</p> <p>22 department would -- I mean, what we're looking at</p> <p>23 was a common occurrence, right? This happened every</p> <p>24 month, something like this?</p> <p>25 A. This was part of the monthly invoicing in</p>

<p style="text-align: right;">Page 89</p> <p>1 accordance with the agreements.</p> <p>2 Q. Okay. And by the way, was it common to --</p> <p>3 in the wiring, to combine all three of the tribal</p> <p>4 entities at once like you see here? You can see</p> <p>5 there's -- there's Mobiloans, there's Great Plains,</p> <p>6 and -- and Plain Green all in the same -- the same</p> <p>7 approval. Do you see that?</p> <p>8 A. It's on the same approval e-mail.</p> <p>9 Independent transactions as far as wires.</p> <p>10 Q. Okay. But they would -- they would be</p> <p>11 processed all together?</p> <p>12 A. Monthly, and they were done at the same</p> <p>13 time.</p> <p>14 Q. Okay. And so in this case, David Gentry is</p> <p>15 asking for your approval to take money out of the</p> <p>16 GPLS account and wire it to Great Plains Lending?</p> <p>17 A. We were authorized by GPLS or have</p> <p>18 authority out of -- I don't remember which specific</p> <p>19 account, but to do these transactions.</p> <p>20 Q. And you didn't need to get an approval from</p> <p>21 GPLS every time you did that?</p> <p>22 A. They were copied on some e-mails.</p> <p>23 Q. They're not copied on this e-mail, right?</p> <p>24 A. I don't know which ones, but they were sent</p> <p>25 e-mails on the transactions that we were going to</p>	<p style="text-align: right;">Page 91</p> <p>1 Q. Okay. And was that -- was it true of the</p> <p>2 whole period of time of the tribal products, that --</p> <p>3 that they would always approve every single wire?</p> <p>4 MR. SHELDON: Object to form.</p> <p>5 A. Well, you're saying that in a form that's</p> <p>6 like, every single -- every wire that was -- every</p> <p>7 wire that was part of the program that had the</p> <p>8 calculations and was sent to them for approval as</p> <p>9 part of the program, yes, they would -- they would</p> <p>10 approve them.</p> <p>11 BY MR. ACKELSBURG:</p> <p>12 Q. And were there situations where they forgot</p> <p>13 to approve, and the wire went through, or they would</p> <p>14 approve after the wire? I mean, was it -- was -- in</p> <p>15 this -- was the system set up in such a way that if</p> <p>16 you didn't get a reply from the tribe, you couldn't</p> <p>17 make the transfer?</p> <p>18 A. That is correct.</p> <p>19 Q. All right. And was that true in 2012 and</p> <p>20 2013?</p> <p>21 MR. SHELDON: Object to form.</p> <p>22 BY MR. ACKELSBURG:</p> <p>23 Q. Or 2011?</p> <p>24 A. If -- as far as I can remember, possibly,</p> <p>25 yes. Yeah, I believe so.</p>
<p style="text-align: right;">Page 90</p> <p>1 have.</p> <p>2 Q. Okay. Okay. Now, were there similar wires</p> <p>3 that had to be prepared for the -- for the flow of</p> <p>4 money in the opposite direction, from the tribal</p> <p>5 accounts to GPLS?</p> <p>6 A. Yes.</p> <p>7 Q. Or from the tribal -- I'm sorry. From the</p> <p>8 tribal accounts to Tailwind or to TC Decision?</p> <p>9 A. Not that I'm aware of. I don't -- I</p> <p>10 don't -- if -- if the tribe authorized us to set up</p> <p>11 the wire, if that was the case, then we would set it</p> <p>12 up. But the tribe would have to approve it.</p> <p>13 Q. Would the tribe have to approve every</p> <p>14 single wire?</p> <p>15 A. Out of their accounts, yes.</p> <p>16 Q. Okay. And how would that approval happen?</p> <p>17 A. We would send them an e-mail: Here are the</p> <p>18 wires to be approved and here's the calculations.</p> <p>19 Q. And -- and they would always do it?</p> <p>20 A. Unless they --</p> <p>21 MR. SHELDON: Object to form.</p> <p>22 BY MR. ACKELSBURG:</p> <p>23 Q. Would they always do it?</p> <p>24 A. Unless they had a disagreement with the</p> <p>25 calculation.</p>	<p style="text-align: right;">Page 92</p> <p>1 MR. SHELDON: Sorry, which one of his</p> <p>2 questions are you answering to?</p> <p>3 A. Well, yeah, I know, I'm getting. . .</p> <p>4 They had to approve the wires, and we --</p> <p>5 we had occasions where they didn't, and money wasn't</p> <p>6 sent.</p> <p>7 MR. ACKELSBURG: Okay. All right.</p> <p>8 Next exhibit, 29.</p> <p>9 (Exhibit No. 29 marked.)</p> <p>10 MR. SHELDON: For the record, this</p> <p>11 document is marked "Confidential, Attorneys' Eyes</p> <p>12 Only."</p> <p>13 BY MR. ACKELSBURG:</p> <p>14 Q. Now, you'll notice that, Ms. Callnin, on</p> <p>15 the lower right-hand corner, that the marking is a</p> <p>16 little bit different. It says "GPLP." That means</p> <p>17 this document came from GPLS, from Victory Park, not</p> <p>18 from -- not from -- from Think Finance, okay, just</p> <p>19 so you understand what -- what these numbers mean.</p> <p>20 A. Uh-huh (affirmative response).</p> <p>21 Q. You got that?</p> <p>22 A. Yes. Yes, sir.</p> <p>23 Q. Okay. Now, what I think I'm showing you,</p> <p>24 and ask me -- and tell me whether I'm right, is that</p> <p>25 this is a bank account reconciliation of the GPLS</p>

<p style="text-align: right;">Page 93</p> <p>1 account that was done September -- that was done 2 September 30th. 3 A. Yes, sir. 4 Q. For -- and this shows the -- the activity 5 in the accounts that occurred during the month of 6 September. 7 A. Yes, sir. 8 Q. And who would have prepared the document 9 that we're looking at? Which -- which team? 10 A. That would have been someone under my -- my 11 team, and it was Jill Carter. 12 Q. And Jill Carter was someone that you 13 supervised? 14 A. Yes, sir. 15 Q. Okay. And it's reviewed by somebody. 16 A. That would have been me. 17 Q. So that's your -- that's your -- those are 18 your initials there? 19 A. Uh-huh (affirmative response). 20 Q. Okay. So this is a document that -- that 21 Jill Carter prepared under your supervision, that 22 you reviewed and signed off on the following month, 23 correct? 24 MR. SHELDON: Object to form. 25 A. She prepared it 10/8, and I signed it</p>	<p style="text-align: right;">Page 95</p> <p>1 right? 2 A. Correct. 3 Q. And in fact, for -- for Great Plains 4 Lending, those are the very -- the very invoices 5 that we were looking at in the -- in the previous 6 exhibit, correct? 7 A. That's correct. 8 Q. And so what this reflects is the work that 9 your team did in ledgering -- I don't know if that's 10 a -- in the accounting world, is that a proper -- 11 A. Ledgering, booking. 12 Q. "Ledgering" is okay? You can -- 13 A. Yeah. 14 Q. You can verb it. Okay. 15 A. Yeah. 16 Q. So this -- this reflects under the GP the 17 three -- the three back-and-forths that you -- we 18 were previously looking at, right? 19 A. Correct. 20 Q. Okay. And that was true of Plain Green and 21 for Mobiloans? 22 A. Correct. 23 Q. Okay. And you mentioned that generally, at 24 the same time of the month, you would -- or that -- 25 that Ms. Rogenski's people, but finance department</p>
<p style="text-align: right;">Page 94</p> <p>1 10/29. 2 BY MR. ACKELSBURG: 3 Q. Right. Okay. Now, if you go to, I believe 4 the third page. Is what we're looking at here daily 5 transaction entries from the GPLS ledger? 6 A. We're looking at this? 7 Q. Yes. 8 A. It's from our general ledger. 9 Q. Your general ledger. Your general ledger 10 for GPLS? 11 A. Correct. 12 Q. Okay. And you see that -- the part of the 13 ledger that I marked at the bottom? 14 A. Correct. 15 Q. Okay. That's my marking. And if we look 16 at -- "PG" means Plain Green, correct? 17 A. Correct. 18 Q. And -- and "GP" is Great Plains Lending? 19 A. Correct. 20 Q. And "ML" is Mobiloans? 21 A. Correct. 22 Q. Okay. And what we're doing -- what you're 23 doing here on the ledger is -- is showing the kind 24 of activity that we were looking at in the invoices 25 that we were looking in the previous exhibits,</p>	<p style="text-align: right;">Page 96</p> <p>1 would prepare the invoices and then do the wires, 2 and -- and they would do it for all three of the 3 tribes at the same time, right? 4 A. Yes, sir. 5 Q. And then similarly, your people in -- on 6 the settlement side would then make sure that all 7 those transactions were ledgered into the general 8 ledger that Think Finance maintained for GPLS? 9 A. Correct. 10 Q. And when it says in the right, "BA funds," 11 are we talking about bank account? 12 A. That is -- that -- 13 Q. What's "BA"? 14 A. That download is the description from the 15 bank. That's the bank side. 16 Q. Okay. So the -- so the far right column is 17 a download from the bank? 18 A. Uh-huh (affirmative response). 19 Q. Okay. And whereas, the column under 20 "Reference" would be from the general ledger? 21 A. Correct. 22 Q. And this is done automatically? Is this 23 generated automatically, or... 24 A. No. My -- my team would download -- download 25 the activity for the month from the bank, and</p>

<p style="text-align: right;">Page 117</p> <p>1 work straight through to the lunch break from here.</p> <p>2 MR. ACKELSBURG: Well, then why don't --</p> <p>3 why don't we just take a quick break now.</p> <p>4 MR. SHELTON: That's fine. Whatever --</p> <p>5 whatever your preference.</p> <p>6 THE VIDEOGRAPHER: We are off the</p> <p>7 record. The time is 11:32 a m.</p> <p>8 (Break taken, 11:32 a m. to 11:46 a m.)</p> <p>9 THE VIDEOGRAPHER: We are back on the</p> <p>10 record. The time is 11:46 a m.</p> <p>11 BY MR. ACKELSBURG:</p> <p>12 Q. Ms. Callnin, before we get to the next --</p> <p>13 next exhibit, we spent a lot of time on the monthly</p> <p>14 invoicing and reconciliation that -- that -- that</p> <p>15 you were involved in, but I want to go back just for</p> <p>16 a second to the daily reconciliations that -- the</p> <p>17 daily settlement work that -- that you were</p> <p>18 responsible for. And I think we -- I think we</p> <p>19 talked at the beginning of the deposition about the</p> <p>20 funding process, but I don't -- I want to focus on</p> <p>21 the collection side and just ask you what the daily</p> <p>22 reconciliation process consists of on the collection</p> <p>23 side.</p> <p>24 A. The ACH file that was produced by the loan</p> <p>25 management system for collecting payments would be</p>	<p style="text-align: right;">Page 119</p> <p>1 in time are something that you prepare and do. So</p> <p>2 it could be -- if you're talking about the daily</p> <p>3 participation transfer of cash receipts of -- you</p> <p>4 know, cash received over to GPLS, that's something</p> <p>5 that you every morning bring up the checking</p> <p>6 account, see what was remitted, and then -- and then</p> <p>7 the transfer to GPLS was done. If it was the</p> <p>8 funding for the ACH, that is something that you</p> <p>9 forecast the fundings for the day, prepare the wire,</p> <p>10 and then send that off to be approved -- both off to</p> <p>11 be approved by the tribes or whoever the approver</p> <p>12 was.</p> <p>13 Q. And so -- and so we're talking about, for</p> <p>14 example, the wire representing the 99 percent share</p> <p>15 that goes to GPLS, right?</p> <p>16 MR. SHELTON: Object to form.</p> <p>17 BY MR. ACKELSBURG:</p> <p>18 Q. Am I right?</p> <p>19 A. Well, I gave you two. So which one do you</p> <p>20 want to ask? I gave -- you know, there's the</p> <p>21 systemic side, the ACH processor doing its thing,</p> <p>22 and moving money back and forth. And then there's</p> <p>23 doing the collections transfer to GPLS or the</p> <p>24 funding transfer over to --</p> <p>25 Q. Well, let's talk about the collections</p>
<p style="text-align: right;">Page 118</p> <p>1 sent to the ACH pro- -- would be sent to the ACH</p> <p>2 processor. We would -- the ACH processors would</p> <p>3 have a reporting system or a portal or something</p> <p>4 where we could go view to see that they accepted it</p> <p>5 and it was the same amount that was posting as</p> <p>6 payments on the customer's system.</p> <p>7 We would then -- when they -- the ACH</p> <p>8 processors were done with their hold period, those</p> <p>9 funds were then remitted back to the collection</p> <p>10 account, and we would record the ledger entries.</p> <p>11 Q. And so there's -- there's something called</p> <p>12 reconciliation, and then there's -- and there's</p> <p>13 also, then, the wire preparations, right? Those are</p> <p>14 two separate activities that occur, right?</p> <p>15 A. They're very different, yes.</p> <p>16 Q. Yeah. So which comes first? Can you sort</p> <p>17 of explain how it works in -- in terms of order?</p> <p>18 A. Wire activities are -- okay. ACH and</p> <p>19 reconciliation and validating the collections and</p> <p>20 the funding are all systemic. Okay. Those ACH</p> <p>21 files and everything are all systemic in passing</p> <p>22 through. So we don't touch anything. We don't do</p> <p>23 anything. We just validate the numbers from the --</p> <p>24 from the ACH processor and from the system.</p> <p>25 The wire transfer activities at any point</p>	<p style="text-align: right;">Page 120</p> <p>1 transfer to GPLS.</p> <p>2 MR. SHAPIRO: I'm sorry, we -- you're</p> <p>3 stepping on the end of her testimony a little bit.</p> <p>4 MR. ACKELSBURG: Oh, I'm sorry.</p> <p>5 MR. SHELTON: We're not getting --</p> <p>6 you -- the witness just said "collection transfer to</p> <p>7 GPLS or the funding transfer over to."</p> <p>8 A. To the tribes. The tribe -- you know,</p> <p>9 letting them know what to send to the ACH processor.</p> <p>10 BY MR. ACKELSBURG:</p> <p>11 Q. When -- when you say "letting them know</p> <p>12 what to send," you've got me confused.</p> <p>13 A. That's the funding account. Right? We</p> <p>14 would forecast the funding file. It had to be at</p> <p>15 the processor. The processor had to have the cash</p> <p>16 for the file that they were going to receive that</p> <p>17 night.</p> <p>18 Q. What confused me was -- was, I think your</p> <p>19 pronoun "them." I think you're referring to the</p> <p>20 tribes?</p> <p>21 A. Yeah.</p> <p>22 Q. You need to -- you told us before that you</p> <p>23 need to get approvals from the tribes, right?</p> <p>24 A. Yes, they have to -- they have to --</p> <p>25 Q. But the actual work of actually doing the</p>

<p style="text-align: right;">Page 121</p> <p>1 wires, doing the reconciliations, that's the Think</p> <p>2 Finance finance department, right?</p> <p>3 A. We --</p> <p>4 MR. SHELDON: Object to form.</p> <p>5 A. We did it on beha- -- to make sure that our</p> <p>6 systems and what was happening with the processors</p> <p>7 were correct. Okay. I do not know if the tribes</p> <p>8 did their own reconciliations. They may very well</p> <p>9 could have. GPLS could be doing -- looking at their</p> <p>10 accounts and doing their own reconciliations.</p> <p>11 BY MR. ACKELSBURG:</p> <p>12 Q. Yeah, and I'm not asking what the tribes</p> <p>13 did on their end for reconciliations. I'm just --</p> <p>14 I'm just trying to -- let -- let's focus on, as an</p> <p>15 example, the transfer from the tribal collections</p> <p>16 account to the GPLS collections account for the</p> <p>17 99 percent share that GPLS had in the collections.</p> <p>18 Right?</p> <p>19 A. Uh-huh (affirmative response).</p> <p>20 Q. You follow?</p> <p>21 A. Uh-huh (affirmative response).</p> <p>22 Q. And there's got to be a transfer, a wire</p> <p>23 transfer, from the account that's in the name of the</p> <p>24 tribe to the account at Citibank in the -- in the</p> <p>25 name of GPLS, correct?</p>	<p style="text-align: right;">Page 123</p> <p>1 Only."</p> <p>2 BY MR. ACKELSBURG:</p> <p>3 Q. Now, we're looking at an e-mail chain that</p> <p>4 you're not -- you're not involved, and Linda</p> <p>5 Rogenski is. But I just want to -- I'm going to ask</p> <p>6 you some questions just about your understanding of --</p> <p>7 you know, of the system.</p> <p>8 So you see that it starts off where --</p> <p>9 November 15, 2012, and you see it's an e-mail from</p> <p>10 Thomas Welch to Chris Lutes?</p> <p>11 MR. SHELDON: She's not -- she doesn't</p> <p>12 know what page you're on.</p> <p>13 BY MR. ACKELSBURG:</p> <p>14 Q. I'm sorry. The second page of -- it's a</p> <p>15 two-page document. Look at the beginning -- the</p> <p>16 beginning of the e-mail trail. You with me now?</p> <p>17 A. Uh-huh (affirmative response).</p> <p>18 Q. You've got to say "yes."</p> <p>19 A. Yes, sir.</p> <p>20 Q. Okay. So it starts with an e-mail from Tom</p> <p>21 Welch to Chris Lutes on November 15, 2012. Do you</p> <p>22 see that?</p> <p>23 A. Yes, sir.</p> <p>24 Q. And so Mr. Welch asks Mr. Lutes, "What</p> <p>25 documents govern the fact that TCAS is ultimately</p>
<p style="text-align: right;">Page 122</p> <p>1 A. Uh-huh, yes, sir.</p> <p>2 Q. And putting aside whatever approvals you</p> <p>3 need to get, whatever e-mails have to occur, the</p> <p>4 actual work of preparing the wire, doing the</p> <p>5 reconciliations, that's done by treasury and</p> <p>6 settlements at Think Finance, correct?</p> <p>7 MR. SHELDON: Object to form.</p> <p>8 A. Right.</p> <p>9 BY MR. ACKELSBURG:</p> <p>10 Q. You did that for the tribes?</p> <p>11 A. We did that -- we did that on behalf of --</p> <p>12 as an admin agent for GPLS. Okay. The -- that</p> <p>13 information was sent to the tribes. The tribes may</p> <p>14 have done it themselves and compared to make sure</p> <p>15 things were correct.</p> <p>16 Q. But you don't know one way or the other</p> <p>17 what they did?</p> <p>18 A. No.</p> <p>19 Q. All right. Let's go to the next -- next</p> <p>20 exhibit.</p> <p>21 MR. ACKELSBURG: We're now up to 31, I</p> <p>22 believe.</p> <p>23 (Exhibit No. 31 marked.)</p> <p>24 MR. SHELDON: This exhibit also</p> <p>25 appears to be marked "Confidential, Attorney's Eyes</p>	<p style="text-align: right;">Page 124</p> <p>1 the administrator for the Plain Green accounts and</p> <p>2 that it has the ability to both initiate and release</p> <p>3 wires for the other two tribes' accounts? Can you</p> <p>4 have someone pass along?"</p> <p>5 Do you understand what this -- first of</p> <p>6 all, you -- you know who this -- I'm not asking if</p> <p>7 you know him personally, but do you know who Tom</p> <p>8 Welch is or was?</p> <p>9 A. Yes, I do.</p> <p>10 Q. Who was he?</p> <p>11 A. He was somebody -- he was somebody at</p> <p>12 Victory Park Capital.</p> <p>13 Q. Okay.</p> <p>14 MR. SHELDON: Irv, can I have a minute</p> <p>15 to read the document first? I don't think --</p> <p>16 MR. ACKELSBURG: Absolutely.</p> <p>17 MR. SHELDON: -- myself or the witness</p> <p>18 has read it, so if you don't mind. . .</p> <p>19 MR. ACKELSBURG: Sure.</p> <p>20 MR. SHELDON: Thank you.</p> <p>21 I've finished reading it.</p> <p>22 Linda, have you finished reading it?</p> <p>23 THE WITNESS: Yeah.</p> <p>24 BY MR. ACKELSBURG:</p> <p>25 Q. Okay. So you see that it starts off that</p>

<p style="text-align: right;">Page 125</p> <p>1 Tom Welch -- Tom Welch is e-mailing Chris Lutes and 2 asking him what documents govern the fact that TCAS 3 -- that's TC Administrative Services, right? 4 A. Correct. 5 Q. Okay. And that's the entity that serves as 6 the administrative agent for Victory Park, right? 7 MR. SHELDON: Object to form. 8 A. To the best of my knowledge, yes. 9 BY MR. ACKELSBURG: 10 Q. Okay. And, "What document governs the fact 11 that TAS (sic) is ultimately the administrator for 12 the PG accounts and that it has the ability to both 13 initiate and release wires for the other two tribes' 14 accounts. Can you have someone pass that along?" 15 Do you see that? 16 A. I see it. 17 Q. Okay. And then -- and then you see the 18 next thing that happens is that Chris Lutes says 19 he's "Not sure it's a document as much as how we set 20 up the accounts with Wells Fargo as part of the 21 online banking admin process. Linda?" And then he 22 forwards it to Linda for her comments. Do you see 23 that? 24 A. I see it, yes. 25 Q. Okay.</p>	<p style="text-align: right;">Page 127</p> <p>1 A. No. 2 Q. Okay. You don't know what that is? 3 A. I know it's their online business system. 4 Q. And -- and -- and that's a system that you 5 utilized, didn't you? 6 A. When you do -- when you set up accounts 7 with them, just like you have your checking account 8 online, if you are a corporation, I believe they 9 make you use this system, which is different than 10 personal. 11 Q. Right. And what Linda is saying is that 12 it's through the setup of the Wells Fargo CEO that 13 Think Finance is able to exercise the authority that 14 we were looking at before with regard to these 15 various accounts? 16 MR. SHELDON: Object to form. 17 BY MR. ACKELSBURG: 18 Q. Do you understand what. . . 19 A. Yeah, I -- I see what it's saying, yes. 20 Q. And -- and is that consistent with your 21 understanding? 22 A. If the -- if that's how the accounts were 23 set up, then yes. 24 Q. Okay. I'm -- I'm -- and I'm -- and you -- 25 and I think you told us you weren't involved in the</p>
<p style="text-align: right;">Page 126</p> <p>1 MR. SHELDON: Object to form. And 2 I'll just say, for all questions regarding this 3 document, you can just -- even if I don't get my 4 "object to form" in at all times, I have a 5 continuing objection in that the witness isn't on 6 this document anywhere. 7 MR. ACKELSBURG: Understood. 8 Understood. 9 BY MR. ACKELSBURG: 10 Q. And -- and then you see Linda then replies 11 to both Chris Lutes and Tom Welch. Do you see that? 12 A. Yes, sir. 13 Q. "Chris is" -- and here's what she says: 14 "Chris is correct in that it is a function of the 15 accounts being included in the group of accounts 16 managed under Think Finance in the Wells Fargo CEO 17 online system. Since Think Finance is the 18 administrator of the CEO, then we ultimately have 19 the ability to manage the access of the accounts. 20 The CEO is set up to require at least two people to 21 approve any additions or changes anywhere in the 22 system." Do you see that? 23 A. I see it. 24 Q. All right. Are you familiar with the Wells 25 Fargo CEO system?</p>	<p style="text-align: right;">Page 128</p> <p>1 setup of the accounts, right? 2 A. That's correct. 3 Q. Right. I understand that. But -- but 4 you're familiar with the Wells Fargo CEO system, 5 correct? 6 A. Everybody had to use it to access whatever 7 we did. 8 Q. Right. That's how you accessed -- that's 9 how you did what you needed to do, right -- 10 MR. SHELDON: Object to form. 11 BY MR. ACKELSBURG: 12 Q. -- with regard to the Wells Fargo accounts? 13 It was through the CEO? 14 A. Yes. 15 Q. Okay. 16 MR. ACKELSBURG: Okay. And just very 17 quickly, Exhibit 32. 18 (Exhibit No. 32 marked.) 19 BY MR. ACKELSBURG: 20 Q. Now, this document, I just went online on 21 Wells Fargo and printed out, on their website, 22 something called "Commercial Electronic Office." 23 And is that what we're talking about when you say 24 "CEO"? 25 A. I -- to the best of my knowledge, I believe</p>

<p style="text-align: right;">Page 129</p> <p>1 so.</p> <p>2 Q. Okay. In terms of handling the</p> <p>3 relationship between Wells Fargo and Think Finance</p> <p>4 and these various accounts, would that be Linda 2 as</p> <p>5 opposed to Linda 1?</p> <p>6 MR. SHELDON: Object to form.</p> <p>7 A. I had nothing to do with the setup of the</p> <p>8 accounts, so yes.</p> <p>9 BY MR. ACKELSBURG:</p> <p>10 Q. Well, who was in charge of the relationship</p> <p>11 between Think Finance and Wells Fargo? Do you know?</p> <p>12 A. It would be treasury. Treasury.</p> <p>13 Q. So probably Badr's people during that</p> <p>14 period of time?</p> <p>15 A. If he -- yeah, if he was there at that</p> <p>16 time.</p> <p>17 Q. And who's -- who's at treasury now? Who's</p> <p>18 performing that function at the company?</p> <p>19 A. Currently at Think Finance? Michael</p> <p>20 Lobell.</p> <p>21 Q. How do you spell that?</p> <p>22 A. L-o-b-e-l-l.</p> <p>23 Q. Okay. How long has he been there?</p> <p>24 A. Less than a year.</p> <p>25 Q. And you said, I believe, that GPLS accounts</p>	<p style="text-align: right;">Page 131</p> <p>1 MR. ACKELSBURG: All right. 34.</p> <p>2 (Exhibit No. 33 marked.)</p> <p>3 MR. SHELDON: Is it 34 or 33?</p> <p>4 MR. ACKELSBURG: 33. I'm sorry. I</p> <p>5 keep doing that.</p> <p>6 BY MR. ACKELSBURG:</p> <p>7 Q. Now, I want to start off with the first</p> <p>8 e-mail in the chain -- wait a minute. Is this the</p> <p>9 right document?</p> <p>10 MR. SHELDON: Irv, does this have</p> <p>11 Ms. Callnin on it?</p> <p>12 THE WITNESS: Huh-uh (negative</p> <p>13 response).</p> <p>14 MR. ACKELSBURG: Yeah, I'm not -- and</p> <p>15 I'm not sure this is the right document. Yeah,</p> <p>16 let's -- let's forget about 33. And just so that --</p> <p>17 just to -- let's just keep 33 -- well, I'll keep</p> <p>18 this marked. I may use it later. But let's just</p> <p>19 forget about 33. Let's go to 34.</p> <p>20 (Exhibit No. 34 marked.)</p> <p>21 MR. SHAPIRO: We're one short over</p> <p>22 here. Do you have another?</p> <p>23 MR. GROGAN: I don't know why we would</p> <p>24 be one short.</p> <p>25 MR. ACKELSBURG: We're just short.</p>
<p style="text-align: right;">Page 130</p> <p>1 are still at Citibank?</p> <p>2 A. As far as I know, yes.</p> <p>3 Q. And the tribal accounts, though, change</p> <p>4 from time to time, which bank they use?</p> <p>5 A. Yes. As far as I know, yes.</p> <p>6 Q. Do you -- do you remember any reasons why</p> <p>7 the tribe -- tribe -- tribal accounts change?</p> <p>8 Anything you've heard or. . .</p> <p>9 MR. SHELDON: Object to form.</p> <p>10 A. Other than we were told that they would</p> <p>11 be -- the tribe would let us know they would be no</p> <p>12 longer using that bank, that the -- whatever reason</p> <p>13 the bank notified them, for whatever reason.</p> <p>14 BY MR. ACKELSBURG:</p> <p>15 Q. Who -- who is -- who would be the person</p> <p>16 most knowledgeable in the finance department, past</p> <p>17 or present, about the reasons for the -- the tribes</p> <p>18 changing bank accounts?</p> <p>19 MR. SHELDON: Object to form.</p> <p>20 A. It could be treasury or CEO.</p> <p>21 BY MR. ACKELSBURG:</p> <p>22 Q. Okay. Or the CFO?</p> <p>23 A. CFO, yeah.</p> <p>24 Q. Okay.</p> <p>25 A. Sorry.</p>	<p style="text-align: right;">Page 132</p> <p>1 MR. GROGAN: We meant to screw with</p> <p>2 Dan.</p> <p>3 MR. ACKELSBURG: It's only two pages.</p> <p>4 Is it two? We've got. . .</p> <p>5 MR. GROGAN: Maybe I had two copies</p> <p>6 here.</p> <p>7 MR. ACKELSBURG: No, it's three pages.</p> <p>8 It is three pages.</p> <p>9 MR. SHELDON: You need to take your</p> <p>10 time and read the whole thing.</p> <p>11 MR. ACKELSBURG: I'm sorry.</p> <p>12 MR. SHAPIRO: All right. Got it.</p> <p>13 BY MR. ACKELSBURG:</p> <p>14 Q. All right. So, basically, this exhibit</p> <p>15 consists of two separate e-mails. And I -- let's</p> <p>16 start with the one on top. And -- and I want to ask</p> <p>17 you whether it is -- was part of the ordinary -- the</p> <p>18 standard and ordinary practice for the finance</p> <p>19 department to send an e-mail about the -- essentially</p> <p>20 be a daily cash report?</p> <p>21 A. Yes.</p> <p>22 Q. And are we looking at an example of that?</p> <p>23 A. As far as I know, yes.</p> <p>24 Q. Okay. And you'll see that this -- and</p> <p>25 you're among the people -- Amy Nay, she was -- she</p>

<p style="text-align: right;">Page 133</p> <p>1 worked under Badr, correct?</p> <p>2 A. Correct.</p> <p>3 Q. Okay. And she's sending this to -- this</p> <p>4 report to the CEO, Mr. Rees; the chief product</p> <p>5 officer, Mr. Harvison; the CFO, Mr. Lutes; various</p> <p>6 people in finance, including yourself, right?</p> <p>7 A. Correct.</p> <p>8 Q. And she -- and also, a copy to Mr. Welch at</p> <p>9 Victory Park, right?</p> <p>10 A. Correct.</p> <p>11 Q. And was this part of the daily protocol</p> <p>12 that treasury performed, that every day they would</p> <p>13 send an e-mail that looked like this to the people</p> <p>14 that appear at the -- at the top of people who got</p> <p>15 this particular e-mail?</p> <p>16 A. Yes, sir.</p> <p>17 MR. SHAPIRO: Object to form.</p> <p>18 Go ahead.</p> <p>19 MR. SHELDON: Just for the record, it</p> <p>20 looks like, as Irv said, this is two different</p> <p>21 documents. This second e-mail is marked</p> <p>22 "Confidential."</p> <p>23 MR. ACKELSBURG: They both are.</p> <p>24 MR. SHELDON: Thank you. They both</p> <p>25 are.</p>	<p style="text-align: right;">Page 135</p> <p>1 Q. Okay. And then the -- the -- the next</p> <p>2 e-mail, you're not included in, but you see it's Amy</p> <p>3 telling Chris, "Based on the discussion in</p> <p>4 yesterday's meeting, Adam is working on splitting</p> <p>5 out the tribe available cash between funding and</p> <p>6 collections, so future e-mails should reflect the</p> <p>7 change." Do you remember that, that --that</p> <p>8 discussion about that issue?</p> <p>9 A. I don't remember that discussion.</p> <p>10 Q. Okay. That's fine.</p> <p>11 Then the next e-mail is from Chris Lutes,</p> <p>12 and you're -- you're included in this one. Do you</p> <p>13 see?</p> <p>14 A. Yeah.</p> <p>15 Q. And his reply is, "Perfect. Thanks. Badr</p> <p>16 and Adam, I want the collections account for the</p> <p>17 tribes to almost act like a clearing account.</p> <p>18 Payments come in daily, we move 99 percent to GPLS</p> <p>19 and 1 percent stays. At the end of the month, the</p> <p>20 net revenue, revenues less losses, from the</p> <p>21 1 percent is moved to the tribe's main operating</p> <p>22 account, since they get the P&L from the 1 percent,</p> <p>23 and the remaining principal collections on the 1</p> <p>24 percent are moved over to the funding account." Do</p> <p>25 you see that?</p>
<p style="text-align: right;">Page 134</p> <p>1 MR. ACKELSBURG: Pleased to be of</p> <p>2 help.</p> <p>3 BY MR. ACKELSBURG:</p> <p>4 Q. All right. Now, let's look at the next</p> <p>5 one. This starts with -- you'll see at the -- if</p> <p>6 you'll go the last page first, this starts with a --</p> <p>7 a daily cash e-mail out of treasury, correct?</p> <p>8 A. Correct.</p> <p>9 Q. Now, this time, it's from Adam Kramer. Do</p> <p>10 you see that?</p> <p>11 A. Yeah. Yeah. Because Amy was '13, and Adam</p> <p>12 was '14. Yes. Okay.</p> <p>13 Q. These are just from two different periods</p> <p>14 of time, correct?</p> <p>15 A. Correct.</p> <p>16 Q. Okay. But these were both people who, at</p> <p>17 different -- Adam and Amy, at two different points</p> <p>18 in time, were the people within finance that would</p> <p>19 generate these daily reports, right?</p> <p>20 A. Yes. Yes.</p> <p>21 Q. Okay. So we're looking at one in 2014.</p> <p>22 It's going to roughly the same group of people at --</p> <p>23 at Think Finance, and similar, a copy also being</p> <p>24 sent to Mr. Welch at Victory Park, correct?</p> <p>25 A. Correct.</p>	<p style="text-align: right;">Page 136</p> <p>1 A. I see that.</p> <p>2 Q. "So the collections account should never</p> <p>3 have a buildup of cash."</p> <p>4 Up until -- up until this point -- do you</p> <p>5 remember this issue or this e-mail?</p> <p>6 A. I vaguely remember this e-mail, yeah.</p> <p>7 Q. Okay. And is that consistent with your</p> <p>8 understanding that what Mr. Lutes is describing as --</p> <p>9 as how the -- the tribe's collection account is --</p> <p>10 is -- is effectively a clearing account? Was that</p> <p>11 your understanding?</p> <p>12 A. My understanding of the collection account</p> <p>13 is that for my purposes, I take -- I see the funds</p> <p>14 coming in, in the current day, and take 99 percent</p> <p>15 of those funds and calculate the amount that goes</p> <p>16 over to GPLS.</p> <p>17 Q. And that happens --</p> <p>18 A. And get that distributed.</p> <p>19 Q. That happens every day?</p> <p>20 A. Correct. And that the remaining was not</p> <p>21 my -- the remaining 1 percent that remains there is</p> <p>22 not my business.</p> <p>23 Q. But it's your -- but part of your job is to</p> <p>24 make sure that only 1 percent remained?</p> <p>25 A. From the current days, yes.</p>

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<p>1 Q. Okay.</p> <p>2 MR. ACKELSBURG: All right. No. 35.</p> <p>3 (Exhibit No. 35 marked.)</p> <p>4 MR. SHELTON: Would you like the</p> <p>5 witness to read it in full or simply --</p> <p>6 MR. ACKELSBURG: No, I don't think she</p> <p>7 needs to read it in full.</p> <p>8 BY MR. ACKELSBURG:</p> <p>9 Q. Have you ever seen the administrative</p> <p>10 agency agreement?</p> <p>11 A. Pieces of it.</p> <p>12 Q. Okay. Now -- and your understanding was,</p> <p>13 this is the agreement that defined the relationship</p> <p>14 between TCAS and Victory Park, right?</p> <p>15 A. As of October 4, 2011, yeah.</p> <p>16 Q. Right. And there were subsequent ones from</p> <p>17 other -- they got updated, right?</p> <p>18 A. As far as I know, yes.</p> <p>19 Q. All right. If you -- if you go to -- let's</p> <p>20 first start at the definitions. And let's look</p> <p>21 first at service fee, since this came up before.</p> <p>22 It's on page 8. Do you see how service fee is</p> <p>23 defined? It's defined as -- as however it's defined</p> <p>24 in the participation agreements?</p> <p>25 A. Correct.</p>	<p>1 previous question in that "agent" is defined</p> <p>2 otherwise on the first page.</p> <p>3 MR. ACKELSBURG: Yeah, okay.</p> <p>4 BY MR. ACKELSBURG:</p> <p>5 Q. Section 2.2, "performing daily loan</p> <p>6 settlement reporting and accounting," that's --</p> <p>7 that's what you do, right?</p> <p>8 A. That's what I do, yes, sir.</p> <p>9 Q. C, "disbursing funds for the purchase of</p> <p>10 the participation interest by GPLS using funds in</p> <p>11 the purchasing account, provided that such funds</p> <p>12 shall only be used to purchase participation</p> <p>13 interests." That's what you do, right?</p> <p>14 A. That -- that is the process that gets done</p> <p>15 in accounting.</p> <p>16 Q. Right. Whether you personally do it --</p> <p>17 A. Yeah.</p> <p>18 Q. -- it's the people in your --</p> <p>19 A. In --</p> <p>20 Q. -- in your direct --</p> <p>21 A. In finance, in the world of finance.</p> <p>22 Q. In -- in the finance department. Okay.</p> <p>23 And similarly, in D, "depositing into the</p> <p>24 collection account funds reflecting all principal,</p> <p>25 interests, fees, and other amounts collected from</p>
Page 138	Page 140
<p>1 Q. And -- and so that's consistent with what</p> <p>2 you were saying before, that -- that -- that it</p> <p>3 might be that the service fee and the revenue share</p> <p>4 are the same thing?</p> <p>5 A. Yes.</p> <p>6 Q. And so can we now agree they're the same</p> <p>7 thing?</p> <p>8 MR. SHELTON: Object to form.</p> <p>9 A. Possibly be the same thing, yes.</p> <p>10 BY MR. ACKELSBURG:</p> <p>11 Q. Okay. All right. Now, if we -- if we move</p> <p>12 to Section 2.2 of the -- of the agreement, on</p> <p>13 page 9, starting on page 9, and this outlines the</p> <p>14 services that the agent shall perform. Now, the</p> <p>15 agent here, we're talking, is Think Finance, right?</p> <p>16 A. Correct. Is my understanding.</p> <p>17 Q. Okay. And these are the services that --</p> <p>18 that Think Finance is supposed to perform for GPLS,</p> <p>19 right?</p> <p>20 MR. SHAPIRO: Object to form.</p> <p>21 BY MR. ACKELSBURG:</p> <p>22 Q. We're looking at -- okay.</p> <p>23 A. As stated in here, yes.</p> <p>24 Q. Okay. So --</p> <p>25 MR. SHELTON: Objection to the</p>	<p>1 (i) the borrowers with respect to the loans</p> <p>2 purchased pursuant to loan purchase agreement and</p> <p>3 ((indiscernible)) the applicable tribe with respect</p> <p>4 to participation interests purchased pursuant to a</p> <p>5 participation agreement."</p> <p>6 That, too, is activity that the Think</p> <p>7 Finance finance department performed?</p> <p>8 A. The majority -- if you talk about</p> <p>9 collections account, the funds that get in there are</p> <p>10 the -- are coming from the ACH processors.</p> <p>11 Q. Right.</p> <p>12 A. We would ensure that they got there.</p> <p>13 Q. Okay. And otherwise, that -- the rest of</p> <p>14 it, that's what the finance people did, right?</p> <p>15 A. Yes.</p> <p>16 Q. That's a -- that's a "yes"?</p> <p>17 A. Yes.</p> <p>18 Q. Okay. And I know that -- well, it says</p> <p>19 preparing and delivering financial statements and</p> <p>20 draft balance sheet. That's all Linda Rogenski's</p> <p>21 department, right?</p> <p>22 MR. SHELTON: I'm sorry, I've lost</p> <p>23 you. I was reading "preparing and delivering," but</p> <p>24 then I -- I didn't get where you got "financial</p> <p>25 statements."</p>

<p style="text-align: right;">Page 141</p> <p>1 BY MR. ACKELSBURG:</p> <p>2 Q. The activity in E, that's -- that's the --</p> <p>3 E and -- E is the -- is the responsibility of Mr. --</p> <p>4 Ms. Rogenski?</p> <p>5 A. Preparing and delivering. . . (Reviews</p> <p>6 document.) Balance sheet draft and statements of</p> <p>7 shareholders' equity, yes.</p> <p>8 Q. That's -- that's L2?</p> <p>9 A. Yes.</p> <p>10 Q. "Maintaining or monitoring" -- we're now at</p> <p>11 F. "Maintaining and monitoring the maintenance of</p> <p>12 the books, records, registers, and associated</p> <p>13 filings of GPLS."</p> <p>14 A. That would -- the way that's worded, it</p> <p>15 could be both of us.</p> <p>16 Q. Right. Because we were already looking at</p> <p>17 some of the -- the ledger and -- and bank</p> <p>18 reconciliations that you did, right?</p> <p>19 A. Correct.</p> <p>20 Q. And -- and some -- but there's also</p> <p>21 additional work with regard to the maintenance of</p> <p>22 the books of GPLS that -- that Linda 2 would do?</p> <p>23 A. That's correct.</p> <p>24 Q. Okay. And then in H, "paying the service</p> <p>25 fee," that's what we were -- the service fee with</p>	<p style="text-align: right;">Page 143</p> <p>1 A. Correct. Yeah.</p> <p>2 Q. And he -- he was in the -- he was in the --</p> <p>3 in the -- in the planning side, the financial</p> <p>4 planning side?</p> <p>5 A. Yes, sir.</p> <p>6 Q. That used to be at one point Oscar Garcia?</p> <p>7 A. Yes, sir.</p> <p>8 Q. Okay. And he is sending you something</p> <p>9 called the MBL and GPL financials for you to do</p> <p>10 something called "validate expenses."</p> <p>11 A. Yes, sir.</p> <p>12 Q. Okay. Can you explain what it is that's</p> <p>13 happening here?</p> <p>14 A. The -- the system that was used to create</p> <p>15 the financials is called Host.</p> <p>16 Q. Host?</p> <p>17 A. Host. Okay. It's a reporting system. Our</p> <p>18 general ledger goes into Host. So what they would</p> <p>19 do, would send them to me just to make sure, on</p> <p>20 expenses, that they agreed back directly to the</p> <p>21 general ledger system, because I always go to the</p> <p>22 general ledger system. I don't use Host.</p> <p>23 Q. Okay.</p> <p>24 A. So he would just ask me to validate the --</p> <p>25 Q. And this is something that you would do</p>
<p style="text-align: right;">Page 142</p> <p>1 respect to the participation interest, that's the</p> <p>2 revenue share that we were talking about before,</p> <p>3 correct?</p> <p>4 MR. SHELTON: Object to form.</p> <p>5 BY MR. ACKELSBURG:</p> <p>6 Q. Correct?</p> <p>7 A. The service fee and participation -- yes,</p> <p>8 it would be that portion of it, I believe, to the</p> <p>9 best of my knowledge.</p> <p>10 Q. All right. That's it with that exhibit.</p> <p>11 MR. ACKELSBURG: All right. 36.</p> <p>12 (Exhibit No. 36 marked.)</p> <p>13 MR. SHELTON: And this document is</p> <p>14 also marked "Confidential."</p> <p>15 MR. ACKELSBURG: And, again, Matthew,</p> <p>16 the -- it was prepared similar to the other ones</p> <p>17 that we've looked at.</p> <p>18 MR. SHELTON: Yes. Thank you.</p> <p>19 BY MR. ACKELSBURG:</p> <p>20 Q. All right. Now, this is an e-mail with an</p> <p>21 attachment, and the e-mail is sent from -- this is a</p> <p>22 July 2015 e-mail from Carlos Lock to you. Do you</p> <p>23 see that?</p> <p>24 A. Correct.</p> <p>25 Q. You've got to. . .</p>	<p style="text-align: right;">Page 144</p> <p>1 periodically?</p> <p>2 A. Uh-huh (affirmative response). Whenever</p> <p>3 they sent them to me to do.</p> <p>4 Q. Okay. So let's -- let's look at -- you</p> <p>5 know, at some of these, and -- and I'll ask -- and</p> <p>6 I'll ask you to explain what we're looking at and</p> <p>7 what -- what you were doing. So let's start with</p> <p>8 the -- the tab on the spreadsheet that is entitled</p> <p>9 "Mobiloans Lending Program Income Statement" for</p> <p>10 June 2015. Do you see that?</p> <p>11 A. Yes, sir.</p> <p>12 Q. Okay. Now, you -- while you don't prepare</p> <p>13 these statements, these statements are sent to you.</p> <p>14 In order for you to do your job, you have to</p> <p>15 understand what you're looking at here, right?</p> <p>16 A. Correct.</p> <p>17 Q. Okay. So why don't you explain to us what</p> <p>18 this -- what this chart or -- or spreadsheet is</p> <p>19 showing us.</p> <p>20 A. So this is showing us the -- the tribal</p> <p>21 financials from a tribal look. Balance sheet,</p> <p>22 income statement in a -- in a very concise manner.</p> <p>23 And then reimbursable program expenses, which are</p> <p>24 the invoices. Then down below, the other expenses,</p> <p>25 which are in our general ledger, and some of the</p>

1 companies in our -- would be booked in our general
2 ledger certain product codes identifying whether it
3 was Plain Green, Great Plains, and those. And I
4 would validate those numbers. I would actually dig
5 into the ledger and make sure that he had those
6 correct.

7 Q. Had the right numbers?

8 A. Yeah.

9 Q. Okay. So -- so let's -- and let -- let me
10 first ask you, you -- you said this is -- this is a
11 tribal look.

12 A. Uh-huh (affirmative response).

13 Q. And what -- what you're meaning -- I take
14 it from your meaning is that this is the flow of
15 money from the standpoint of the tribe, the tribal
16 entity?

17 A. Well, it --

18 MR. SHELDON: Object to form.

19 BY MR. ACKELSBURG:

20 Q. What do you mean?

21 A. I meaning if -- if the tribe owns
22 1 percent, this is the 1 percent look.

23 Q. Okay. Well, it also -- okay. And -- and
24 it also includes the -- the invoicing that we were
25 looking at before, the invoicing that comes in and

1 account?

2 MR. SHELDON: Object to form.

3 A. 99 percent of what customers pay went to --
4 to Citibank, and the 1 percent was retained by the
5 tribes.

6 BY MR. ACKELSBURG:

7 Q. And when you say "Citibank," we're talking
8 about GPLS?

9 A. Yes.

10 Q. Okay. So this is just the -- the 1 percent
11 that the -- the tribal entity retained. And then
12 there's a -- a reduction for loan losses on
13 1 percent retained. What's -- explain to us what
14 that means.

15 A. That would be the charge-offs. So the
16 program would -- the tribe would retain 1 percent of
17 their charge-offs, and the rest would flow through --

18 Q. Through GPLS?

19 A. Yes.

20 Q. Yes. Okay. And then there's -- that --
21 that leaves a net -- the net 1 percent that they --
22 that they have. That's their share of the -- of the
23 interest and fees that customers paid over the
24 course of June, net -- netting out the -- the losses
25 that occur, the charge-offs during that same period

1 out?

2 A. Correct.

3 Q. And -- and that's off of the GPLS
4 99 percent portion, right?

5 A. Yes.

6 Q. Okay. So --

7 A. On the one invoice.

8 Q. Yes.

9 A. Yes.

10 Q. Yeah. Okay. So -- well, we were looking
11 at Great Plains Lending before, and now we're
12 looking at Mobiloans, right?

13 A. Uh-huh (affirmative response).

14 Q. Correct?

15 A. Correct.

16 Q. Okay. So let's first look at Items 1
17 through 7. So "Cash Revenue on 1 Percent Retained."
18 So this would be the total -- this is 1 percent of
19 the total collections that -- that were retained by
20 Mobiloans --

21 A. Correct.

22 Q. -- for that month?

23 A. Correct.

24 Q. Meaning that if this is 1 percent, then the
25 99 percent ended up going into the Citibank GPLS

1 of time?

2 A. Correct.

3 Q. And then you have the profit share on the
4 loans sold. Now, this is -- this is what we've been
5 talking about the service fee or the -- or the -- or
6 the revenue share, right? That's the same -- this
7 is just -- when they say "profit share," we're --
8 we're back -- this is just another way of referring
9 to the revenue share or the service fee, correct?

10 MR. SHELDON: Object to form.

11 BY MR. ACKELSBURG:

12 Q. Correct?

13 A. The -- the way that I understood it, yes.

14 Q. Okay. And so this is -- apparently, from
15 Mobiloans, it was 4 percent, according to this --

16 A. Document, yes.

17 Q. Okay. And then what's "Cost of Sales,
18 \$20"? What is that?

19 A. Those -- those would be, like, their
20 portion of -- like, a customer loss if there was
21 a -- if there was a system error, and they had to
22 forgive a portion of a customer payment, that kind
23 of thing. Errors on the system.

24 Q. So if there was a forgiveness of a customer
25 payment during the month, the tribe would have to

<p style="text-align: right;">Page 149</p> <p>1 swallow their 1 percent portion of that?</p> <p>2 A. Uh-huh (affirmative response).</p> <p>3 Q. Okay. So if, for example -- so if a</p> <p>4 decision was made -- I mean, let's give you an</p> <p>5 example. Customer says, "I don't owe this because</p> <p>6 it's illegal." And the decision is made to forgive</p> <p>7 the balance. The way that would be handled on the</p> <p>8 accounting -- on the accounting side would be,</p> <p>9 99 percent of that lost principal would go to GPLS,</p> <p>10 and 1 percent would go to the tribal entity?</p> <p>11 A. Correct.</p> <p>12 MR. SHELDON: Object to form.</p> <p>13 A. Yes.</p> <p>14 BY MR. ACKELSBURG:</p> <p>15 Q. All right. And then it says "Operating</p> <p>16 Expenses." That's another reduction. What kind of</p> <p>17 operating expenses would be -- would be on this part</p> <p>18 of the ledger?</p> <p>19 A. I'm not sure. I would have to go into the</p> <p>20 --</p> <p>21 Q. Okay.</p> <p>22 A. -- the roll-up behind it.</p> <p>23 Q. Well, it's a small amount, so --</p> <p>24 A. Yeah.</p> <p>25 Q. -- it's probably not worth talking about.</p>	<p style="text-align: right;">Page 151</p> <p>1 Expenses." This -- this would be sort of the</p> <p>2 same -- well, this is what's -- I see. This is</p> <p>3 what's asterisk down at the bottom.</p> <p>4 A. Yes.</p> <p>5 Q. Right? And this is among the expenses that</p> <p>6 you had to verify, right?</p> <p>7 A. Correct.</p> <p>8 Q. Okay. But before we get to that -- or --</p> <p>9 well, why don't we go right there. That's fine.</p> <p>10 So Clarity Services, what's that?</p> <p>11 A. They provided some sort of -- and it's a</p> <p>12 data verification.</p> <p>13 Q. So this is -- this is third-party billing</p> <p>14 that's connected to the loan decisioning process,</p> <p>15 correct?</p> <p>16 A. Yes.</p> <p>17 Q. So some data is pulled from Clarity</p> <p>18 expenses to decide whether to make a loan, and</p> <p>19 that's a charge, it's an expense?</p> <p>20 A. That is correct.</p> <p>21 Q. Okay. And then there's something called</p> <p>22 Iovation. Is that similar?</p> <p>23 A. Yeah, I know very little about what each</p> <p>24 one exactly did, but they were all in verifying</p> <p>25 customer data in order --</p>
<p style="text-align: right;">Page 150</p> <p>1 But the -- so the net program revenue for Mobiloans</p> <p>2 was -- in June of 2015 was \$306,653, right?</p> <p>3 A. Correct.</p> <p>4 Q. Okay. Now we deal with the reimbursable</p> <p>5 program expenses. And -- and this relates to the</p> <p>6 kind of invoicing that we were looking at before,</p> <p>7 right?</p> <p>8 A. (Nods head affirmatively.)</p> <p>9 Q. You've got to say "yes" or "no."</p> <p>10 A. Yes. Yes.</p> <p>11 Q. Okay. And so there's the Tailwind charge</p> <p>12 of \$100 a loan, right?</p> <p>13 A. Yes, sir.</p> <p>14 Q. The TC Decision Sciences charge of \$25 a</p> <p>15 loan. And then there's a different -- there's</p> <p>16 another fee, "Loan to TC Admin." Do you know what</p> <p>17 that is? Due annually. Do you have any idea what</p> <p>18 that is?</p> <p>19 A. Not -- not off the top of my head.</p> <p>20 Q. Okay. All right. But there are these --</p> <p>21 there are -- there's a variety of -- and then -- and</p> <p>22 there's "Internal Tribal Expenses." What's that?</p> <p>23 A. In the program, I'm -- the tribe had</p> <p>24 expenses that they would let us know that they paid.</p> <p>25 Q. Okay. And then -- then "Other Reimbursable</p>	<p style="text-align: right;">Page 152</p> <p>1 Q. Okay. All of --</p> <p>2 A. -- to approve the loan.</p> <p>3 Q. In order to approve the loan. Or deny the</p> <p>4 loan, right?</p> <p>5 A. Yes.</p> <p>6 Q. Okay. And then there are other costs of</p> <p>7 sale. There's the ACH processing. So these would</p> <p>8 be the fees charged by the ACH processor, right?</p> <p>9 A. Correct.</p> <p>10 Q. And similarly, for credit card processing,</p> <p>11 there would be fees?</p> <p>12 A. Yes, sir.</p> <p>13 Q. So some customers are paying by credit card</p> <p>14 rather than ACH, right?</p> <p>15 A. Yes. Debit card.</p> <p>16 Q. Or debit card. Okay.</p> <p>17 So you couldn't pay by credit card, you'd</p> <p>18 have to pay by debit card?</p> <p>19 A. (Nods head affirmatively.)</p> <p>20 Q. I was wondering. You -- okay?</p> <p>21 MR. SHELDON: Don't forget to -- to be</p> <p>22 verbal in your --</p> <p>23 A. Yes. Yes.</p> <p>24 BY MR. ACKELSBURG:</p> <p>25 Q. And then there are charges to MetaSource</p>

<p style="text-align: right;">Page 153</p> <p>1 and Yessio. Am I right that these are collection 2 companies? 3 A. Customer service and collections. 4 Q. Customer service and collections. So these 5 would be like if a -- if a Mobiloans customer called 6 or was called, there would be a -- they'd be talking 7 with a customer service representative who worked 8 for MetaSource or Yessio. 9 MR. SHELDON: Object to form. 10 BY MR. ACKELSBURG: 11 Q. Correct? 12 A. They -- they were contracted by the -- by 13 the tribes, yes, and worked for them, yes. 14 Q. And -- and -- and all of these costs during 15 June were added up, it came up to 302,240, right? 16 A. Correct. 17 Q. And that got -- then got inserted into 18 line 12, "Other Reimbursable Expenses"? 19 A. Yes, sir. 20 Q. Now, let me make sure I understand how this 21 works. So all -- 8, 9, 10, 11, 12 are all the 22 expenses that were charged to the tribal entity for 23 that -- during that month period, right? 24 A. Correct. 25 Q. And those then are all zeroed out by a</p>	<p style="text-align: right;">Page 155</p> <p>1 A. Yes. 2 Q. Okay. And that's what this is showing 3 here. 4 A. Yes. 5 Q. Right? 6 A. Yes. 7 Q. Yes. And that's the way it worked with 8 Mobiloans, Plain Green, and Great Plains Lending? 9 MR. SHELDON: Object to form. 10 A. Well, I won't guarantee it worked exactly 11 the same for each one, but the Mobil- -- 12 BY MR. ACKELSBURG: 13 Q. The concept -- the concept was the same? 14 A. If that's what the agreement said. I don't 15 remember off the top of my head. 16 Q. I'm not asking you to remember the 17 agreements. I'm just asking you to remember the 18 accounting. 19 A. If that's -- yeah, if it's the same 20 represents -- representation on their financials, 21 yes. 22 Q. And so the net program profit -- and we're 23 here -- we're now -- we're not talking about the 24 profit that Think Finance made, right? 25 A. As far as I know, yes, that's correct, this</p>
<p style="text-align: right;">Page 154</p> <p>1 reimbursement, line 13, from GPLS for the exact same 2 amount of money, right? 3 A. Correct. 4 Q. This is the way all of the tribal programs 5 worked; am I right, that whatever operating expenses 6 existed were charged as an accounting matter to the 7 tribe, but then zeroed out by a reimbursement from 8 GPLS in the exact same amount? 9 MR. SHELDON: Object to form. 10 A. I don't know exactly how it was done. 11 Okay. Because, you know, if you're -- if you're -- 12 are you stating that the tribe received 13 1-million-490? 14 BY MR. ACKELSBURG: 15 Q. No. What I'm -- what I'm asking you -- 16 remember about an hour or so ago, we were looking at 17 those invoices for the -- 18 A. Right. 19 Q. -- Tailwind, and -- and what you showed us 20 was that -- that Think Finance would create invoices 21 going in and out. 22 A. Correct. 23 Q. And -- and so that effectively, in the end, 24 the tribe wasn't actually paying anything; it was 25 GPLS that was paying it. Am I right?</p>	<p style="text-align: right;">Page 156</p> <p>1 would be -- 2 Q. And we're not talking about -- let me make 3 sure I -- I'm not sure I got the negatives or the 4 positives there. So -- so we're looking here at 5 what the tribe -- the tribal entity made during the 6 month of June 2015? 7 A. That is correct. 8 Q. We're not looking at the amount that Think 9 Finance or Victory Park made during June 2015 from 10 the interest and fees paid by Mobiloans customers? 11 A. That is correct. 12 Q. Okay. That's what you meant by "tribal 13 look"? 14 A. Yes. 15 Q. And they don't ever see what Think Finance 16 or Victory Park made, right -- 17 MR. SHELDON: Object to form. 18 BY MR. ACKELSBURG: 19 Q. -- in the reporting, as far as you know? 20 A. Not that I know of. 21 Q. Okay. 22 THE VIDEOGRAPHER: Counsel, I 23 apologize. 24 Ms. Callnin, you have the cable in your 25 hands. It's -- if you -- there you go. Thank you.</p>

<p style="text-align: right;">Page 157</p> <p>1 BY MR. ACKELSBURG:</p> <p>2 Q. All right. So -- now let's -- let's turn</p> <p>3 the page, and we're looking at now a year-to-date.</p> <p>4 And this is still on the tribal side, correct?</p> <p>5 A. Yes.</p> <p>6 Q. And this is just the same information that</p> <p>7 we saw for June of 2015, now giving you January</p> <p>8 through June of 2015, right?</p> <p>9 A. That is correct.</p> <p>10 Q. And -- okay. And again, this is still just</p> <p>11 the tribal side, not Think Finance and Victory Park?</p> <p>12 A. That is correct.</p> <p>13 Q. Okay. And similarly, the next page is</p> <p>14 inception to date. So if -- if I told you that</p> <p>15 Mobiloans started towards the end of 2011, does that</p> <p>16 sound about right?</p> <p>17 A. Yes, sir.</p> <p>18 Q. Okay. So this is from the end of 2011</p> <p>19 through June of 2015, how much the tribe -- the</p> <p>20 tribal entity, Mobiloans, actually made over the</p> <p>21 course of the -- of the whole program, correct?</p> <p>22 A. Correct.</p> <p>23 Q. That they made roughly \$6.4 million in --</p> <p>24 in program revenue, correct?</p> <p>25 MR. SHELDON: Object to form.</p>	<p style="text-align: right;">Page 159</p> <p>1 saw somewhere else.</p> <p>2 Q. Okay. And if you look at the top, there's</p> <p>3 reference to Clayton and KapCharge and Intercept. I</p> <p>4 see there are no -- well -- well, Clayton has -- has</p> <p>5 items, and -- oh, and KapCharge. So am I right that</p> <p>6 during this particular period of time, Clayton and,</p> <p>7 it looks like Reliafund and KapCharge -- were these</p> <p>8 different ACH providers?</p> <p>9 A. Yes, sir.</p> <p>10 Q. When did Intercept stop?</p> <p>11 MR. SHELDON: Object to form.</p> <p>12 A. I don't remember exactly. '12. 2012. '11</p> <p>13 or '12.</p> <p>14 BY MR. ACKELSBURG:</p> <p>15 Q. Do you know why -- it -- it appears that in</p> <p>16 June of 2015, at least on the Mobiloans side, you're</p> <p>17 dealing with three different ACH providers.</p> <p>18 A. That's correct.</p> <p>19 Q. Clayton, Reliafund, and KapCharge.</p> <p>20 A. That's correct.</p> <p>21 Q. That sounds like it's making matters more</p> <p>22 complicated than it needs to be.</p> <p>23 A. It's a lot of work.</p> <p>24 MR. SHELDON: Object to form.</p> <p>25 BY MR. ACKELSBURG:</p>
<p style="text-align: right;">Page 158</p> <p>1 A. I'm sorry, what amount did you -- do I --</p> <p>2 BY MR. ACKELSBURG:</p> <p>3 Q. 16 -- \$16.4 million.</p> <p>4 A. 16. Okay. Yeah.</p> <p>5 Q. I'm sorry, I might have misspoken.</p> <p>6 A. Yeah.</p> <p>7 Q. Okay. And -- and during that -- during the</p> <p>8 inception, Tailwind Marketing billed and was paid by</p> <p>9 GPLS approximately \$42.4 million. Do you see that?</p> <p>10 A. That is correct.</p> <p>11 Q. And TC Decision Sciences was paid</p> <p>12 approximately 10.6 million, right?</p> <p>13 A. That is correct.</p> <p>14 Q. TC Admin Services, 10.6 million. Do you</p> <p>15 see that?</p> <p>16 A. Uh-huh (affirmative response).</p> <p>17 Q. But those were all -- the tribes didn't</p> <p>18 actually have to pay that. That was zeroed out by</p> <p>19 the invoicing and accounting that we've been talking</p> <p>20 about, correct?</p> <p>21 A. Correct.</p> <p>22 Q. Now, turn the page and tell me what this</p> <p>23 is. This was in the same spreadsheet.</p> <p>24 A. This is the breakdown of every general</p> <p>25 ledger account that supports those numbers that we</p>	<p style="text-align: right;">Page 160</p> <p>1 Q. It's a lot of work. I bet it is. Why --</p> <p>2 why three instead of one?</p> <p>3 A. If I owned a business, I wouldn't want to</p> <p>4 put all my chickens in one basket.</p> <p>5 Q. That sounds rather speculative. I'm asking</p> <p>6 more like what you remember happening.</p> <p>7 A. They did -- they did -- they did not want</p> <p>8 to have all ACHes running out of -- all volume</p> <p>9 running out of one processor.</p> <p>10 Q. And who is "they"?</p> <p>11 A. Management. Management and the tribe</p> <p>12 didn't feel it was in good form to have all -- all</p> <p>13 the ACH volume out of one processor.</p> <p>14 Q. Now, was that true of -- of the other two</p> <p>15 tribal entities as well, that the ACH got split</p> <p>16 between multiple ACH providers?</p> <p>17 A. That is correct.</p> <p>18 Q. They added to your work?</p> <p>19 A. (Nods head affirmatively.)</p> <p>20 Q. Did they add to your staff?</p> <p>21 A. (Shakes head negatively.)</p> <p>22 MR. SHELDON: Don't forget you've got</p> <p>23 to -- verbal -- verbal responses.</p> <p>24 A. Added to my work, yes. Added to my staff,</p> <p>25 no.</p>

<p style="text-align: right;">Page 161</p> <p>1 BY MR. ACKELSBURG:</p> <p>2 Q. Okay.</p> <p>3 A. I should say "our" work.</p> <p>4 Q. And why don't we flip and -- I guess we can</p> <p>5 go through this quickly. The -- the -- that e-mail</p> <p>6 also was asking you to verify the reimbursable</p> <p>7 expenses for Great Plains Lending for June 2015 as</p> <p>8 well, right?</p> <p>9 A. Yes, sir.</p> <p>10 Q. And -- and we're looking at the equivalent</p> <p>11 statement for Great Plains Lending?</p> <p>12 A. Yes.</p> <p>13 Q. That was prepared in the same way that you</p> <p>14 described for Mobiloans, and it -- and other than</p> <p>15 the fact that the profit share -- where is that?</p> <p>16 Looks like I didn't -- looks like I didn't include</p> <p>17 the -- my copying was bad. Okay.</p> <p>18 Do you -- the profit share, whatever</p> <p>19 percentage -- whatever percentage it was, it was,</p> <p>20 right? And that's according to the agreement --</p> <p>21 A. Yes.</p> <p>22 Q. -- that -- that -- that the Great Plains</p> <p>23 Lending had?</p> <p>24 A. Correct.</p> <p>25 Q. Okay. But the -- the structure of the</p>	<p style="text-align: right;">Page 163</p> <p>1 MR. SHELDON: Do you see how the table</p> <p>2 below isn't on the second one, but it's on the first</p> <p>3 one?</p> <p>4 MR. ACKELSBURG: I'm trying to think</p> <p>5 what -- let me see what --</p> <p>6 MR. SHELDON: So the first one has</p> <p>7 this table.</p> <p>8 MR. ACKELSBURG: You mean Mobiloans.</p> <p>9 Yeah. No, I see that. It's not -- it's not on</p> <p>10 there.</p> <p>11 BY MR. ACKELSBURG:</p> <p>12 Q. So it's probably -- I mean, I actually</p> <p>13 could -- I have the actual spreadsheet that I can</p> <p>14 put up on the -- on the screen.</p> <p>15 A. It's okay.</p> <p>16 Q. It's not necessary, is it?</p> <p>17 A. No.</p> <p>18 Q. Okay. If -- if I printed this out</p> <p>19 correctly, there would have been a table of</p> <p>20 reimbursable expenses for Great Plains Lending just</p> <p>21 like there was for Mobiloans, correct?</p> <p>22 A. I believe there should have been, yes.</p> <p>23 Q. Because that's what they were asking you to</p> <p>24 do, to check --</p> <p>25 A. Yeah.</p>
<p style="text-align: right;">Page 162</p> <p>1 financial statements for Great Plains Lending, it</p> <p>2 was the same -- the same structure that we were just</p> <p>3 looking at for Mobiloans?</p> <p>4 MR. SHELDON: Which two pages are you --</p> <p>5 are you asking to be compared between?</p> <p>6 MR. ACKELSBURG: The last three pages</p> <p>7 of the document.</p> <p>8 MR. SHELDON: Right, but what are you</p> <p>9 comparing them to?</p> <p>10 MR. ACKELSBURG: I'm trying to save</p> <p>11 time, Matthew, but if you'd like me to go</p> <p>12 through it, I'll be more than happy to.</p> <p>13 MR. SHELDON: No, I'm just -- so I'm</p> <p>14 looking at the top of the document. I'm asking you</p> <p>15 because the page that's titled "Mobiloans Lending</p> <p>16 Program Income Statement June 2015" -- because I</p> <p>17 think what you're asking to compare it to --</p> <p>18 MR. ACKELSBURG: Yeah.</p> <p>19 MR. SHELDON: -- the page "Great</p> <p>20 Plains Lending, LLC, Program Income Statement</p> <p>21 June 2015," and there's just a formatting</p> <p>22 difference, and I don't know if that's a printing</p> <p>23 difference or if that's --</p> <p>24 MR. ACKELSBURG: It's probably a</p> <p>25 printing difference.</p>	<p style="text-align: right;">Page 164</p> <p>1 Q. -- the expenses, right?</p> <p>2 A. Yes.</p> <p>3 Q. Okay. And if we look at the way that --</p> <p>4 and reimbursable expenses were zeroed out in the</p> <p>5 same way that -- that we were talking about before</p> <p>6 in Mobiloans so that the tribes effectively didn't</p> <p>7 have to pay any of those, that it just got paid by</p> <p>8 GPLS, correct?</p> <p>9 MR. SHELDON: Object to form.</p> <p>10 A. It got paid out of the program, yes.</p> <p>11 BY MR. ACKELSBURG:</p> <p>12 Q. Yes. Out of the GPLS side of the program?</p> <p>13 A. Yes.</p> <p>14 Q. Okay.</p> <p>15 MR. ACKELSBURG: This would -- this</p> <p>16 would be a good time to break, I think.</p> <p>17 THE VIDEOGRAPHER: Off record now? We</p> <p>18 are off the record. The time is 12:44 p.m.</p> <p>19 (Break taken, 12:44 p.m. to 1:17 p.m.)</p> <p>20 THE VIDEOGRAPHER: We are back on the</p> <p>21 record. The time is 1:17 p.m.</p> <p>22 (Exhibit No. 37 marked.)</p> <p>23 MR. ACKELSBURG: While we were</p> <p>24 offline, I presented the witness with Exhibit P-37,</p> <p>25 which she is reviewing.</p>

<p style="text-align: right;">Page 165</p> <p>1 MR. SHELDON: Which is marked</p> <p>2 "Confidential."</p> <p>3 MR. ACKELSBURG: That was your cue.</p> <p>4 A. (Reviews document.)</p> <p>5 Okay.</p> <p>6 BY MR. ACKELSBURG:</p> <p>7 Q. All right. You ready?</p> <p>8 A. Okay.</p> <p>9 Q. Okay. So Exhibit 37, what is it?</p> <p>10 Something you've seen before?</p> <p>11 A. This one, no. It's -- but the format is</p> <p>12 the standard operating procedure format.</p> <p>13 Q. So there are documents like this that</p> <p>14 you've seen, correct?</p> <p>15 A. Yes. Yes.</p> <p>16 Q. Okay. And -- and they exist for -- for all</p> <p>17 three of the tribal entities, Plain Green,</p> <p>18 Mobiloans, and Great Plains Lending?</p> <p>19 A. I believe so, yes.</p> <p>20 Q. All right. And we're looking at one that</p> <p>21 was dated back in March of 2012, and it's covering</p> <p>22 daily wire transfers. Do you see that?</p> <p>23 A. To replenish the funding account and</p> <p>24 collections, yes.</p> <p>25 Q. Okay. So -- and standard operating</p>	<p style="text-align: right;">Page 167</p> <p>1 A. No.</p> <p>2 Q. You were involved in a different one?</p> <p>3 A. I had -- I think they asked me about --</p> <p>4 what was it? Payment -- payments -- the payment</p> <p>5 process. There were a couple they asked me about,</p> <p>6 but I don't remember the -- the daily wire transfer</p> <p>7 one.</p> <p>8 Q. And when you say "they," do you remember</p> <p>9 who would have --</p> <p>10 A. That would have been the operations group</p> <p>11 that was writing this.</p> <p>12 Q. Okay.</p> <p>13 A. So I -- I don't know for sure, they may</p> <p>14 have consulted with treasury on this. I don't know</p> <p>15 for sure.</p> <p>16 Q. Okay. All right.</p> <p>17 A. I don't remember this one.</p> <p>18 Q. Now, when there's -- the way this is</p> <p>19 written, it refers to "third-party service provider,</p> <p>20 TPSP." That's Think Finance, am I correct, the way</p> <p>21 this is -- the way this is set up?</p> <p>22 MR. SHELDON: Object to form.</p> <p>23 A. That's the way it -- it kind of reads, from</p> <p>24 me reading it.</p> <p>25 BY MR. ACKELSBURG:</p>
<p style="text-align: right;">Page 166</p> <p>1 procedures, who -- who at -- what department at</p> <p>2 Think Finance generated standard operating</p> <p>3 procedures?</p> <p>4 A. There -- there was someone in the</p> <p>5 operations group that was responsible for creating</p> <p>6 all the operating procedures for each of the</p> <p>7 products.</p> <p>8 Q. And, now, this particular one covers a</p> <p>9 finance responsibility, correct, in how -- in fact,</p> <p>10 this is some of the same activities that we were</p> <p>11 talking about this morning, wire transfers, correct?</p> <p>12 A. Correct.</p> <p>13 Q. And so someone in operations, you're not</p> <p>14 sure who, would have drafted this, presumably back</p> <p>15 in 2012, to describe the procedures followed by the</p> <p>16 Think Finance finance people with regard to wire</p> <p>17 activity?</p> <p>18 A. Yes.</p> <p>19 Q. And do you remember -- and I -- I realize</p> <p>20 this goes back a long ways. Do you remember being</p> <p>21 involved in or consulted in the drafting of a</p> <p>22 standard operating procedure dealing with daily wire</p> <p>23 transfers?</p> <p>24 A. Not the daily wire transfers.</p> <p>25 Q. You don't remember that?</p>	<p style="text-align: right;">Page 168</p> <p>1 Q. Right. So there's a reference to</p> <p>2 "authorized lender." And when it says "authorized</p> <p>3 lender," in this case we're talking about Plain</p> <p>4 Green, right?</p> <p>5 A. That would be correct.</p> <p>6 Q. Whereas, the "TPSP" would be Think Finance?</p> <p>7 MR. SHELDON: Object to form. The</p> <p>8 witness has testified she doesn't know this</p> <p>9 document.</p> <p>10 BY MR. ACKELSBURG:</p> <p>11 Q. Yeah. Okay. What -- what -- TPSP in</p> <p>12 this -- in this circumstance, we're -- we're talking</p> <p>13 about the treasury people, right, in -- in finance?</p> <p>14 A. (Reviews document.)</p> <p>15 It sounds like the -- the process that</p> <p>16 gets done.</p> <p>17 Q. By the Think Finance finance people, right?</p> <p>18 A. Yes.</p> <p>19 Q. Okay. There's also reference, I believe,</p> <p>20 to "ACH service provider" here. You can see that</p> <p>21 under Item 2, right? The second section of the --</p> <p>22 A. Second section, yeah.</p> <p>23 Q. Yeah. "Daily wire transfer of collected</p> <p>24 payments to be remitted" -- well, it's actually</p> <p>25 referenced above, too, at Item 1, No. 2, "TPSP</p>

<p style="text-align: right;">Page 169</p> <p>1 determines necessary amounts to be wired to ACH 2 service provider," right? 3 A. Correct. 4 Q. And then down under Item 2, "ACH service 5 provider determines amount of collected funds 6 received to be remitted to the lender's collection 7 account." All right. This is what -- this is what 8 we were talking about this morning, right? 9 A. Yes. 10 Q. Okay. 11 A. They -- they do it. 12 Q. Yeah. I mean, this is -- this is just an 13 attempt to describe the standard operating 14 procedures for the wire activity that you were 15 explaining to us this morning, correct? 16 MR. SHELDON: Object to form. 17 A. Yes. 18 BY MR. ACKELSBURG: 19 Q. Okay. 20 A. Pretty much. And all the standard 21 operating procedures were approved by the client. 22 Q. I understand. So -- so in order -- so the 23 way it would work would be, someone in operations 24 would draft this, and once everybody was on board at 25 Think Finance, you would then take this to the -- to</p>	<p style="text-align: right;">Page 171</p> <p>1 practices and lender's relationship with TPSP." Do 2 you see that? 3 A. Uh-huh (affirmative response). 4 Q. Okay. Now, I'm going to put it in my own 5 words and -- and see if I'm correctly summarizing 6 what this is saying. That in the fund -- when 7 you're talking about transferring money from the 8 tribal account -- the tribal funding account to the 9 ACH provider, that ordinarily, you should get an 10 approval from the lender; in this case, Plain Green. 11 But if that doesn't happen, if the -- if the 12 approval hasn't been received, the wire activity can 13 still occur as long as the transfer is in the 14 ordinary course of business and consistent with past 15 practices and, in this case, Plain Green's 16 relationship with Think Finance. Am I -- 17 MR. SHELDON: Object to form. The 18 witness has already testified she's not familiar 19 with this document. 20 MR. ACKELSBURG: Yeah, I -- right. I 21 understand. 22 BY MR. ACKELSBURG: 23 Q. Now you can answer. That's what it says, 24 right? 25 A. That's what it says.</p>
<p style="text-align: right;">Page 170</p> <p>1 the particular tribal entity for their approval, 2 correct? 3 A. Correct. 4 Q. That was the system? 5 A. That was the way I understood it, yes. 6 Q. Yes. Okay. Okay. Now, if you'll look at 7 Item 1 point -- and you can see how -- first of all, 8 it looks like the way this is broken down is, it's 9 broken down into Section 1 or Item 1 and Section 2 10 or Item 2, where 1 is dealing with the funding 11 account, and -- and 2 is the collections account, 12 right? 13 A. Correct. 14 Q. Okay. So let's look at funding. And look 15 at No. 9. 16 A. Yeah. Okay. 17 Q. "In instances where lender cannot" -- and 18 "lender" is Plain Green in this case, right? 19 A. Correct. 20 Q. Okay. "In instances where lender cannot 21 access online bank account and does not provide 22 e-mail approval to TPSP before the applicable bank 23 wire cut-off time, TPSP may release wire transfers 24 so long as such wire transfers are in the ordinary 25 course of business and consistent with past</p>	<p style="text-align: right;">Page 172</p> <p>1 Q. Okay. And is that -- I know this morning, 2 you -- you said that you thought that the wires 3 always had tribal approval. 4 A. Yeah, I -- 5 MR. SHELDON: Object to form. 6 BY MR. ACKELSBURG: 7 Q. Was that because -- you weren't actually 8 the one that did the wires, it was -- it was the 9 treasury side that did the wires? 10 A. Treasury side filled out its standard wire -- 11 repetitive wire transfer form. 12 Q. And the only time that you would be 13 involved in a wire is if you were serving as to the 14 backup, like you explained before. Otherwise, you 15 wouldn't have -- you wouldn't be involved in the 16 wiring at all, right? 17 A. That's correct. 18 Q. Okay. So you -- you don't really know, do 19 you, if there were occasions when the -- the wire -- 20 that the treasury people processed a wire without 21 tribal approval? You don't -- 22 A. Not off the top of my head. 23 Q. Right. And -- and if the standard 24 operating procedure says they could do it as long as 25 it was in the ordinary course and consistent with</p>

<p style="text-align: right;">Page 173</p> <p>1 past practices, well, they -- that's what the</p> <p>2 standard operating procedure says, and they probably</p> <p>3 followed that, right?</p> <p>4 MR. SHELTON: Object to form.</p> <p>5 MR. SHAPIRO: Object to form.</p> <p>6 BY MR. ACKELBERG:</p> <p>7 Q. You can answer it now.</p> <p>8 A. Yes, I -- at that point in time, yes.</p> <p>9 Q. Okay. And the -- and it looks like Item 2</p> <p>10 has -- if you look at -- the same language --</p> <p>11 there's a 9 under -- for collections, and there's</p> <p>12 the same thing, that if you -- effectively, if you</p> <p>13 can't get Plain Green's approval for a wire, you can</p> <p>14 still do the wire, you can still transfer money, in</p> <p>15 this case, out of the tribal account to -- the</p> <p>16 99 percent to -- to GPLS as long as it's in the</p> <p>17 ordinary course of business and consistent with past</p> <p>18 practice. That -- that's what the standard</p> <p>19 operating procedure was at least as of March of</p> <p>20 2012?</p> <p>21 MR. SHAPIRO: Objection.</p> <p>22 MR. SHELTON: Object to form. The</p> <p>23 witness has said she is not familiar with this</p> <p>24 document.</p> <p>25 BY MR. ACKELBERG:</p>	<p style="text-align: right;">Page 175</p> <p>1 A. Which auditors?</p> <p>2 Q. Well, and that could actually --</p> <p>3 A. Because there are lots of auditors.</p> <p>4 Q. That's helpful, because that actually is my</p> <p>5 question. You mentioned that the auditors sometimes</p> <p>6 would come in and ask to see standard operating</p> <p>7 procedures.</p> <p>8 A. Yes.</p> <p>9 Q. So give me an example. Like, if you --</p> <p>10 from -- do you remember, like, an auditor asking</p> <p>11 for . . .</p> <p>12 A. If Plain Green's auditors came in, they</p> <p>13 would ask for --</p> <p>14 Q. I see. So these were auditors for the</p> <p>15 tribal entities you're talking about?</p> <p>16 A. Some of -- sometimes their auditors came</p> <p>17 in, yes.</p> <p>18 Q. Okay. And if -- and if it was a standard</p> <p>19 operating procedure that specifically concerned your</p> <p>20 activity, like, for example, involving ACH</p> <p>21 processor, the auditor would talk to you and would</p> <p>22 review the standard operating procedure and make</p> <p>23 sure that the standard operating procedure was</p> <p>24 consistent with what, in fact, happened?</p> <p>25 MR. SHELTON: Object to form.</p>
<p style="text-align: right;">Page 174</p> <p>1 Q. Right. Okay. Now you can answer.</p> <p>2 A. That's -- that's the way it reads, yes.</p> <p>3 Q. Okay. And standard operating procedures,</p> <p>4 were they there to be followed or ignored?</p> <p>5 A. Followed.</p> <p>6 Q. It was important to follow them, right?</p> <p>7 A. They were -- they were there to be followed</p> <p>8 as -- as a guide. So it -- and when audit came in,</p> <p>9 you know, they would have asked if we had standard</p> <p>10 -- there were standard operating procedures for</p> <p>11 everything.</p> <p>12 Q. And do you remember -- so you remember</p> <p>13 auditors coming in and asking about standard</p> <p>14 operating procedures?</p> <p>15 A. They would ask for them, yeah.</p> <p>16 Q. And what -- auditing what? Do you remember</p> <p>17 specific situations where there was an auditor</p> <p>18 coming in and asking -- were you actually asked</p> <p>19 about standard operating procedures?</p> <p>20 MR. SHELTON: Object to form;</p> <p>21 compound.</p> <p>22 A. Let's go back to -- auditing what? Were --</p> <p>23 the ques- -- I'll ask you to clarify.</p> <p>24 BY MR. ACKELBERG:</p> <p>25 Q. Sure.</p>	<p style="text-align: right;">Page 176</p> <p>1 A. They would review it with us, yes, if</p> <p>2 they -- if they did come to review with us, yes.</p> <p>3 BY MR. ACKELBERG:</p> <p>4 Q. And so -- and so you would expect that</p> <p>5 during that same audit, that -- that the tribal</p> <p>6 auditors would -- would talk to you about, for</p> <p>7 example, ACH processing or -- or daily</p> <p>8 reconciliations, they would be talking to treasury</p> <p>9 about the standard operating procedure covering</p> <p>10 daily wire transfers?</p> <p>11 MR. SHELTON: Object to form; calls</p> <p>12 for speculation.</p> <p>13 MR. SHAPIRO: Object to form.</p> <p>14 BY MR. ACKELBERG:</p> <p>15 Q. Okay. Now you can answer.</p> <p>16 A. I believe they would.</p> <p>17 Q. Yes. Okay.</p> <p>18 MR. ACKELBERG: Now, next exhibit,</p> <p>19 38.</p> <p>20 (Exhibit No. 38 marked.)</p> <p>21 MR. SHELTON: Exhibit 38 is also</p> <p>22 marked "Confidential."</p> <p>23 A. (Reviews document.)</p> <p>24 Okay.</p> <p>25 BY MR. ACKELBERG:</p>

<p style="text-align: right;">Page 177</p> <p>1 Q. All right. Ready to go?</p> <p>2 A. Uh-huh (affirmative response).</p> <p>3 MR. SHELDON: Not just yet.</p> <p>4 Okay.</p> <p>5 BY MR. ACKELSBURG:</p> <p>6 Q. So it looks like, Ms. Callnin, that at the</p> <p>7 end of -- at the end of 2014, going into early 2015,</p> <p>8 this daily wire transfer standard operating</p> <p>9 procedure was revised.</p> <p>10 A. Looks to be.</p> <p>11 Q. Do you remember this happening?</p> <p>12 A. I remember being copied on some of the</p> <p>13 e-mails, yeah.</p> <p>14 Q. Okay. And -- and that's what we're looking</p> <p>15 at, right?</p> <p>16 A. That's correct.</p> <p>17 Q. Okay. And so what it looks like is,</p> <p>18 someone named LeAnna Brillhart, who -- senior</p> <p>19 policy -- policies analyst, is -- would this be one</p> <p>20 of those operations people you were talking about</p> <p>21 before?</p> <p>22 A. Yes.</p> <p>23 Q. Okay. So -- so LeAnna Brillhart would have</p> <p>24 been a person whose responsibility was dealing with</p> <p>25 standard operating procedures?</p>	<p style="text-align: right;">Page 179</p> <p>1 MR. SHAPIRO: Object to the form.</p> <p>2 A. Because she didn't know to send it to --</p> <p>3 BY MR. ACKELSBURG:</p> <p>4 Q. To Adam, right? She sent to it the wrong</p> <p>5 person, right?</p> <p>6 A. Correct.</p> <p>7 Q. Okay. So then you said -- well, I don't</p> <p>8 know what you said. But she -- she eventually --</p> <p>9 you say, "Adam, this falls into your territory,"</p> <p>10 right?</p> <p>11 A. Yes. With a smiley.</p> <p>12 Q. With a smile. I actually noticed there's a</p> <p>13 lot of smiles.</p> <p>14 A. I try.</p> <p>15 Q. This seems to be part of the standard</p> <p>16 operating procedure.</p> <p>17 A. Procedure, yes.</p> <p>18 Q. And Adam then comments to you, "This SOP is</p> <p>19 fine, except TPSP can't release the wires. Only</p> <p>20 Plain Green employees are able to release wires. If</p> <p>21 PGL does not approve by a certain time, then the</p> <p>22 TPSP will follow up to remind them."</p> <p>23 So it sounds like -- well, let --</p> <p>24 A. It changed.</p> <p>25 Q. So do you -- go ahead. What were you going</p>
<p style="text-align: right;">Page 178</p> <p>1 A. Correct.</p> <p>2 Q. And updating them or drafting them or</p> <p>3 dealing with them to get them up to -- updated?</p> <p>4 A. Correct.</p> <p>5 Q. Okay. By the way, is LeAnna Brillhart</p> <p>6 still with the company?</p> <p>7 A. No.</p> <p>8 Q. Is there anybody there who's in charge of</p> <p>9 standard operating procedures, that you know of?</p> <p>10 A. Not currently. They may have folded in</p> <p>11 under compliance.</p> <p>12 Q. Okay. So -- so LeAnna Brillhart is</p> <p>13 sending -- this starts -- these e-mails start off</p> <p>14 December 1, 2014, Ms. Brillhart sends to you a copy</p> <p>15 of this draft wire transfer memo, right?</p> <p>16 A. Uh-huh (affirmative response).</p> <p>17 Q. And she's asking you whether you were able</p> <p>18 to review it. And then she sends, it looks like a</p> <p>19 follow-up, January 29th, "The SOP is now out of</p> <p>20 date. I'm pending your review so that it may be</p> <p>21 sent to compliance. Please take a look at it</p> <p>22 immediately."</p> <p>23 Why would she -- why would LeAnna</p> <p>24 Brillhart be sending you the wire transfer standard</p> <p>25 operating procedure?</p>	<p style="text-align: right;">Page 180</p> <p>1 to say?</p> <p>2 A. No, no, no. It sounds like it changed.</p> <p>3 Q. A change. Like -- or he was proposing a</p> <p>4 change?</p> <p>5 A. (Shakes head negatively.)</p> <p>6 Q. No?</p> <p>7 A. It changed.</p> <p>8 Q. There was a change?</p> <p>9 A. Uh-huh (affirmative response).</p> <p>10 Q. And the change is in -- in this SOP that</p> <p>11 we're looking at, right?</p> <p>12 MR. SHELDON: Which SOP are you</p> <p>13 referring to?</p> <p>14 MR. ACKELSBURG: The one that's</p> <p>15 attached to the e-mail.</p> <p>16 MR. SHELDON: Well, hold on. I</p> <p>17 actually have a question for you. I wasn't going to</p> <p>18 raise it until you tried to refer to it. But the</p> <p>19 Bates numbers are not consecutive, and if you look</p> <p>20 at the top e-mail --</p> <p>21 MR. ACKELSBURG: Oh, okay.</p> <p>22 MR. SHELDON: -- there's a reply.</p> <p>23 MR. ACKELSBURG: Oh, okay.</p> <p>24 MR. SHELDON: And documents don't get</p> <p>25 attached to replies.</p>

1 MR. ACKELSBURG: Right. Maybe --
 2 you're right.
 3 MR. SHELDON: I'm not sure how this
 4 got attached to this chain.
 5 MR. ACKELSBURG: I probably went
 6 searching in the -- it looks like I went -- I
 7 probably went searching for it in the -- in the
 8 production. So -- all right. So let's -- let's
 9 treat this as -- let's call this 38-A and B. 38-A
 10 will be the e-mails, and 38-B will be the standard
 11 operating procedure. Thanks for pointing that out.
 12 BY MR. ACKELSBURG:
 13 Q. So you said that you -- you vaguely
 14 remember this happening, right? You remember
 15 getting the e-mails and you remember -- I think you
 16 testified that you remember trying to bring Adam in
 17 because this wire transfer was -- was his bailiwick,
 18 right?
 19 A. It was under his area.
 20 Q. Right.
 21 COURT REPORTER: It was under his --
 22 I'm sorry?
 23 THE WITNESS: Area.
 24 MR. SHELDON: You just need to
 25 remember to speak up --

1 THE WITNESS: Yeah.
 2 MR. SHELDON: -- and verbalize.
 3 BY MR. ACKELSBURG:
 4 Q. And it looks like LeAnna, based on -- so it
 5 looks like LeAnna is looking at the version that we
 6 were looking at before, about ordinary course of
 7 business, right? That you can do it even if you
 8 don't get the approvals as long as it's in the
 9 ordinary course. Do you see that?
 10 MR. SHELDON: Object to form.
 11 BY MR. ACKELSBURG:
 12 Q. Do you see that?
 13 A. On the -- on the SOP?
 14 Q. Yeah.
 15 A. Yeah.
 16 Q. It looks like -- it looks like --
 17 effectively, Adam, it looks like, wants to change
 18 1 -- 1.9 and 2.9 -- or 1.8 and 1.9.
 19 A. That's correct.
 20 Q. Right? Okay. He wants to delete 1.8,
 21 which we were looking at before, said, "In instances
 22 where lender cannot access online bank account,
 23 authorized lender representative will e-mail
 24 approval to Think Finance," right? That's what it
 25 was before. He's saying delete that and add -- and

1 add a new 1.9.
 2 MR. SHELDON: Object to form. Is that
 3 a pending question?
 4 BY MR. ACKELSBURG:
 5 Q. And then he does the same thing with --
 6 with 2.9. He's got new language, right?
 7 A. He has new language, yes, sir.
 8 Q. Okay. And -- and actually, if we look at
 9 38-B, 38-B is a document that appears to be a daily
 10 wire transfer operating -- standard operating
 11 procedure that was -- became effective January 30th,
 12 2015. Do you see? And that's --
 13 A. Yes.
 14 Q. And that's around the same time period. In
 15 fact, that's the same day that -- that Adam e-mails
 16 to LeAnna what -- what should be in there, right?
 17 A. Correct.
 18 Q. Okay. So now, as of -- so as of
 19 January 2015, the new language is -- well, there's
 20 no longer any reference to the -- the "ordinary
 21 course." And it now says -- well, it really doesn't --
 22 it just doesn't have anything in there about it. It
 23 says that -- well, 1.8 says that you can't e-mail
 24 without -- without the e-mail approval of the
 25 lender, right?

1 A. Correct.
 2 Q. And 1.9 has removed all reference to the
 3 "ordinary course." It just says that Think -- Think
 4 will retain wire confirmations and backup. That's
 5 all, right?
 6 A. Correct.
 7 Q. Okay. So -- and did the same thing -- do --
 8 do you recall, with regard to the other tribal
 9 entities, Mobiloans and Great Plains Lending, were --
 10 were -- were they changing -- were they changing all
 11 three of them at -- if you remember, or was it just
 12 Plain Green?
 13 MR. SHELDON: Object to form.
 14 A. I don't -- I don't remember exactly all
 15 three changing. I do remember Great Plains changed
 16 also.
 17 BY MR. ACKELSBURG:
 18 Q. Well, this is --
 19 A. This is -- this is Plain Green.
 20 Q. This is Plain Green.
 21 A. Yeah.
 22 Q. So you remember Plain Green changing?
 23 A. Plain Green changing, yes.
 24 Q. Yes. Okay. You don't remember the others
 25 changing?

1 A. Great Plains changed.
 2 Q. Oh, Great Plains -- so Great Plains changed
 3 like this?
 4 A. Very -- yes, very similar to this.
 5 Q. Okay. So there was -- Great Plains had
 6 a -- an older version that had the same "ordinary
 7 course" language that the Plain Green standard
 8 operating procedure had, but -- and -- and
 9 similarly, in -- in January of 2015, that language
 10 was removed from the Great Plains Lending standard
 11 operating procedure?
 12 A. I don't remember seeing it to confirm it.
 13 Q. Okay. All right. That's fine.
 14 But we can agree at least as to Plain
 15 Green, looking at these two standard operating
 16 procedures -- and -- and by the way, if you look at
 17 the -- at the last page -- well, actually, it says
 18 the -- the author was the lender representative. So
 19 who's that? I mean, that -- that's really -- we're
 20 talking about LeAnna Brillhart, right?
 21 MR. SHELDON: Object to form.
 22 A. I don't know if that was the intent. I
 23 don't know if that was the intent or not.
 24 BY MR. ACKELSBURG:
 25 Q. Okay. And it says approved by legal and

1 compliance. So we don't really -- we don't know if
 2 it got approved by -- you would presume, though, at
 3 some point, it would have -- it would have gotten
 4 sent to the -- sent to the -- sent to the tribal
 5 entity for approval, right?
 6 A. Yes.
 7 Q. Okay. But can we agree at least as to
 8 Plain Green -- you don't -- you don't remember Great
 9 Plains Lending or Mobiloans, but from the inception --
 10 or at least from 2012, from March of 2012 until
 11 July -- to January of 2015, the standard operating
 12 procedure was that the treasury people in finance
 13 could move money in and out of Plain Green accounts
 14 without tribal involvement as long as it was in the
 15 ordinary course of business and consistent with past
 16 practices and Plain Green's relationship with Think.
 17 That's what the standard operating procedure was for
 18 that earlier period of time, correct?
 19 MR. SHAPIRO: Object to form.
 20 MR. SHELDON: Object to form.
 21 A. I believe so, yes.
 22 BY MR. ACKELSBURG:
 23 Q. And that starting in January, that
 24 discretion was removed from the standard operating
 25 procedure?

1 MR. SHELDON: Object to form.
 2 A. From what it reads, yes.
 3 BY MR. ACKELSBURG:
 4 Q. Yeah. Do you remember any changes being
 5 made to the standard operating procedures that you
 6 were more -- that more directly related to your area
 7 of responsibility around the same time period?
 8 A. No. My processes really didn't change.
 9 MR. ACKELSBURG: Okay. This will be
 10 quick. 39.
 11 (Exhibit No. 39 marked.)
 12 BY MR. ACKELSBURG:
 13 Q. Now, if -- let me see. Let's call this --
 14 let's do the same thing we did before and call this
 15 39-A and B. And 39-A will be the e-mail, and 39-B
 16 will be the map.
 17 Now, Ms. Callnin, before, when we were
 18 talking about the reimbursable expenses -- remember?
 19 -- that -- that you were -- you were being asked
 20 to -- to verify. And we were looking at some vendor
 21 payments.
 22 A. Uh-huh (affirmative response).
 23 Q. Okay. I believe this relates to vendor
 24 payments like that. Let me ask you this first: Do
 25 you remember April Sealy?

1 A. Yes.
 2 Q. Okay. What department was she in?
 3 A. I want to -- I want to say operations. She
 4 had some sort of title. I can't remember it.
 5 Q. Okay. Is she there anymore?
 6 A. She is at Elevate.
 7 Q. She's at Elevate. Okay.
 8 What about Cynthia Worthington, do you
 9 remember her?
 10 A. Uh-huh (affirmative response).
 11 Q. Was she also -- well, it says -- no,
 12 actually, it looks -- April Sealy, I'm noticing here
 13 on the second page, senior director, operations and
 14 BPO, right?
 15 A. Yeah.
 16 Q. What's BPO? That's all right. Don't worry
 17 about it.
 18 A. BPO, I don't remember.
 19 Q. Okay. That's fine.
 20 Was Ms. Worthington -- it says director of
 21 program -- process improvement.
 22 A. Process improvement.
 23 Q. Is that operations too?
 24 A. It's down in that area, yeah.
 25 Q. Yeah. Is she still at the company?

<p style="text-align: right;">Page 189</p> <p>1 A. She's still at -- she's at Elevate.</p> <p>2 Q. She's at Elevate, too. Okay.</p> <p>3 So it seems to be that you're -- you're</p> <p>4 checking with -- with April and Cynthia about some</p> <p>5 bill -- some invoices from call centers, right?</p> <p>6 A. Correct.</p> <p>7 Q. And you wanted to just make -- this is you</p> <p>8 in the capacity of verifying expenses?</p> <p>9 A. Yes. Both -- both us Lindas wanted to make</p> <p>10 sure that --</p> <p>11 Q. You're paying the right --</p> <p>12 A. Right stuff.</p> <p>13 Q. The right stuff. Okay.</p> <p>14 And this would be the kind of bills that</p> <p>15 would be paid out of the GPLS collections account,</p> <p>16 correct?</p> <p>17 MR. SHELDON: Object to form.</p> <p>18 BY MR. ACKELSBURG:</p> <p>19 Q. Well, it would be -- it would be like the</p> <p>20 invoicing we saw before?</p> <p>21 A. It would be paid out of the program.</p> <p>22 Q. Yeah.</p> <p>23 A. To which account. . .</p> <p>24 Q. Right. But effectively paid out of the</p> <p>25 99 percent, right?</p>	<p style="text-align: right;">Page 191</p> <p>1 A. That's -- when I say "program" --</p> <p>2 Q. That's what you mean, right?</p> <p>3 A. Yes.</p> <p>4 Q. Yeah. Okay. And so then they are telling</p> <p>5 you who the -- you know, where these call centers</p> <p>6 are, right, and who -- for which tribe -- tribal</p> <p>7 entity they work, right?</p> <p>8 A. Correct.</p> <p>9 Q. So she's telling you that on the Meta bill,</p> <p>10 that -- that Meta contracts with Plain Green and</p> <p>11 Great Plains and sends a separate invoice to each,</p> <p>12 right? "CMS/Center One contracts with Plain Green</p> <p>13 and Great Plains, and Mobiloans as well, and sends</p> <p>14 them each an invoice," right?</p> <p>15 A. Correct.</p> <p>16 Q. And Telvista contracts with Plain Green and</p> <p>17 Mobiloans, and sends separate invoices to them. And</p> <p>18 it says, "Mobiloans is just beginning next week."</p> <p>19 And Yessio, I think we saw that. Now, we</p> <p>20 were looking at an invoice -- we were looking at a</p> <p>21 statement from -- from -- a financial statement for</p> <p>22 Great Plains Lending for -- and Mobiloans, I think,</p> <p>23 from 2015 where -- where they had Yessio expenses.</p> <p>24 But it looks like at this point in time, Yessio was</p> <p>25 only with PayDay One, right?</p>
<p style="text-align: right;">Page 190</p> <p>1 MR. SHELDON: Object to form.</p> <p>2 BY MR. ACKELSBURG:</p> <p>3 Q. Because it's a reimbursable expense. It</p> <p>4 would be like we were looking at before, it would</p> <p>5 be -- it would be billed to -- it would be billed</p> <p>6 to -- to the tribe -- tribal entity, but then the</p> <p>7 tribal entity would be reimbursed for that expense</p> <p>8 out of the 99 percent GPLS share. It was like we</p> <p>9 were looking at before, right?</p> <p>10 MR. SHELDON: Object to form.</p> <p>11 A. Yes. And I'm -- I'm not exactly sure</p> <p>12 the -- the flow.</p> <p>13 BY MR. ACKELSBURG:</p> <p>14 Q. Okay. We're not sure what -- what account</p> <p>15 or what --</p> <p>16 A. Yeah.</p> <p>17 Q. Right. I understand. But in terms of the</p> <p>18 overall --</p> <p>19 A. It came out of the program, yes.</p> <p>20 Q. Yes. Okay. And, again, "coming out of the</p> <p>21 program" means coming out of the GPLS 99 percent</p> <p>22 share of revenue --</p> <p>23 MR. SHELDON: Object to form.</p> <p>24 BY MR. ACKELSBURG:</p> <p>25 Q. -- correct?</p>	<p style="text-align: right;">Page 192</p> <p>1 A. That could be, yes.</p> <p>2 Q. Okay. And then -- and you needed this</p> <p>3 information. And it looks like you were also asking</p> <p>4 who's in Honduras, that you were suspicious -- not</p> <p>5 suspicious, but you're questioning if there's a bill</p> <p>6 we're supposed to send to Honduras, you didn't know</p> <p>7 who that was, right?</p> <p>8 A. That is correct.</p> <p>9 Q. Okay.</p> <p>10 A. Neither one of us did.</p> <p>11 Q. And so then she -- she sent you a map,</p> <p>12 right?</p> <p>13 A. Uh-huh (affirmative response).</p> <p>14 Q. Okay. And then I think I found the map,</p> <p>15 not in consecutive order, but somewhere else. And</p> <p>16 see if this looks familiar.</p> <p>17 MR. SHELDON: Is that the last page</p> <p>18 of --</p> <p>19 MR. ACKELSBURG: Yeah.</p> <p>20 MR. SHELDON: Or second-to-last page,</p> <p>21 sorry, of this exhibit?</p> <p>22 MR. ACKELSBURG: The last -- the last</p> <p>23 two pages, the map and the legend, is 39-B. I -- I</p> <p>24 called one 38-B, right? You weren't listening. So</p> <p>25 38-A is the e-mail -- 38-A are the e-mails.</p>

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

COMMONWEALTH OF PENNSYLVANIA *
BY ATTORNEY GENERAL JOSH *
SHAPIRO, *
Plaintiff, *

VS. * Civil Action
* No. 14-7139-JCJ
THINK FINANCE, INC., et al., *
Defendants. *

ORAL AND VIDEOTAPED DEPOSITION OF
LINDA ROGENSKI
APRIL 19, 2018

DEPOSITION of LINDA ROGENSKI, produced
as a witness at the instance of the Plaintiff, and
duly sworn, was taken in the above-styled and
numbered cause on the 19th day of April, 2018, from
9:06 a.m. to 4:49 p.m., before Christy R. Sievert,
CSR, RPR, in and for the State of Texas, reported by
machine shorthand, at the Fort Worth Club, 306 West
7th Street, Fort Worth, Texas 76102, pursuant to the
Federal Rules of Civil Procedure and the provisions
stated on the record or attached hereto.

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1 PROCEEDINGS

2 THE VIDEOGRAPHER: We are now on the

3 record for the videotaped deposition of Linda

4 Rogenski. The time is 9:06 a.m., April 18, 2018.

5 In the matter of the Commonwealth of Pennsylvania,

6 et al, vs. Think Finance, Civil Action

7 No. 14-7139-JCJ. Being held in the United States

8 District Court for the Eastern District of

9 Pennsylvania.

10 The court reporter is Christy Sievert, and

11 the videographer is Gus Phillips. Both are

12 representatives of Kaplan Leaman and Wolfe Court

13 Reporters.

14 Will counsel please state their

15 appearances for the record.

16 MR. ACKELSBURG: Irv Ackelsberg,

17 special counsel for the Commonwealth of

18 Pennsylvania.

19 MR. MIRARCHI: Saverio Mirarchi, for

20 the Commonwealth of Pennsylvania.

21 MR. GROGAN: John Grogan, also for the

22 Commonwealth.

23 MR. DAUGHERTY: Andrew Daugherty, on

24 behalf of National Credit Adjusters.

25 MR. HAWS: Matthew Haws, on behalf of

<p style="text-align: right;">Page 9</p> <p>1 the Victory Park defendants.</p> <p>2 MR. SHAPIRO: Dan Shapiro, for the</p> <p>3 Victory Park defendants. And Scott Zeminck, the</p> <p>4 general counsel of Victory Park, on the telephone</p> <p>5 with us as well.</p> <p>6 MR. SHELDON: Matt Sheldon, for the</p> <p>7 Think Finance defendants.</p> <p>8 MR. BOUGHRUM: Jonathan Boughrum, for</p> <p>9 Ken Rees.</p> <p>10 MR. SCHEFF: Richard Scheff, for Linda</p> <p>11 Rogenski.</p> <p>12 LINDA ROGENSKI</p> <p>13 having been first duly sworn,</p> <p>14 testified as follows:</p> <p>15 EXAMINATION</p> <p>16 BY MR. ACKELSBERG:</p> <p>17 Q. Good morning, Ms. Rogenski. And is it</p> <p>18 Rogenski or Rogenski?</p> <p>19 A. It's Rogenski.</p> <p>20 Q. Rogenski. Okay.</p> <p>21 I introduced myself to you before. I'm</p> <p>22 Irv Ackelsberg, and I'm with -- representing the</p> <p>23 Commonwealth of Pennsylvania. And you understand</p> <p>24 this is litigation against your former employer,</p> <p>25 Think Finance?</p>	<p style="text-align: right;">Page 11</p> <p>1 and answers. And, you know, I'll be asking</p> <p>2 questions. You -- you then answer. And then</p> <p>3 your -- my questions, your answers are going to be</p> <p>4 in a transcript that the court reporter here is</p> <p>5 going to be preparing at the end, a written</p> <p>6 transcript. Do you understand that?</p> <p>7 A. Yes.</p> <p>8 Q. And that it's possible that that transcript</p> <p>9 could be used by any of the parties in this case</p> <p>10 over the course of the -- the proceedings in this --</p> <p>11 in this lawsuit. Okay?</p> <p>12 A. Yes.</p> <p>13 Q. Now, it's not just -- as you see, there's</p> <p>14 lots of lawyers in the room. And so from time to</p> <p>15 time, there may be an objection. Your lawyer may</p> <p>16 object, but also some of these -- the other lawyers</p> <p>17 representing the other parties may insert an</p> <p>18 objection. They're objecting to my question. What</p> <p>19 you need to understand is that unless your lawyer</p> <p>20 directs you not to answer that specific question,</p> <p>21 you still have to answer the question, even though</p> <p>22 lawyers have objected. Okay?</p> <p>23 A. Okay.</p> <p>24 Q. All right. So the court reporter is going</p> <p>25 to be typing -- well, not just my questions, not</p>
<p style="text-align: right;">Page 10</p> <p>1 A. Yes.</p> <p>2 Q. Okay. And various other -- other</p> <p>3 defendants.</p> <p>4 Ms. Rogenski, have you ever been deposed</p> <p>5 before?</p> <p>6 A. One time.</p> <p>7 Q. Okay. And was that in a personal matter or</p> <p>8 related to your job?</p> <p>9 A. Personal matter.</p> <p>10 Q. Okay. And what kind of a case was that?</p> <p>11 A. A car accident.</p> <p>12 Q. Okay. So you might have some -- how long</p> <p>13 ago was that?</p> <p>14 A. It was in my early 20s.</p> <p>15 Q. Okay.</p> <p>16 A. So a long time ago.</p> <p>17 Q. So -- okay. So -- so I'm sure your lawyer</p> <p>18 has gone over, like, how this all works, and you've</p> <p>19 got a -- a feel already for how this is going to</p> <p>20 happen, but just to clarify that you do understand</p> <p>21 what's going on here, I need to just run through a</p> <p>22 few preliminaries.</p> <p>23 And the first is -- is just to confirm</p> <p>24 with you that the way this -- the way this</p> <p>25 proceeding works is that it's a series of questions</p>	<p style="text-align: right;">Page 12</p> <p>1 just your answers, but all the objections.</p> <p>2 Everything that happens here on the record is going</p> <p>3 to be recorded, and that's the official -- the</p> <p>4 official transcript. Okay?</p> <p>5 A. Okay.</p> <p>6 Q. And because the written transcript, rather</p> <p>7 than the videotape that -- that is being prepared,</p> <p>8 is going to be the official record, we really need</p> <p>9 you to -- to give us verbal responses to all the</p> <p>10 questions. So nods or shakes or shrugs, those</p> <p>11 things don't get -- make -- that's hard for the</p> <p>12 court reporter to -- to record. So there may be a</p> <p>13 moment when I say, "Is that a yes?" And, you know,</p> <p>14 it -- please forgive me. It's not intended to be</p> <p>15 disrespectful. It's just that we need -- we need</p> <p>16 verbal responses to everything. Okay?</p> <p>17 A. Okay.</p> <p>18 Q. Alrighty. Another sort of ground rule is</p> <p>19 that if you don't understand my question, it's</p> <p>20 perfectly fine to say, "I don't understand the</p> <p>21 question," and then I'll try to rephrase it. If you</p> <p>22 don't know the answer to the question, you can --</p> <p>23 that's perfectly fine too. You can just tell me, "I</p> <p>24 don't know the answer to that."</p> <p>25 Now, the -- the whole thing here is just --</p>

<p style="text-align: right;">Page 85</p> <p>1 had to come from somewhere.</p> <p>2 Q. Okay. And what we now see on page 7 is</p> <p>3 where it actually comes from in -- in practice with</p> <p>4 regard to the Plain Green product, right?</p> <p>5 A. That's correct.</p> <p>6 Q. Okay. And it looks like what happens is,</p> <p>7 Think Finance gives up to \$2 million to Haynes</p> <p>8 Investment, which then gives to it the tribe.</p> <p>9 MR. SCHEFF: Object to the form.</p> <p>10 MR. SHELDON: Object to form.</p> <p>11 BY MR. ACKELBERG:</p> <p>12 Q. Do I have that right?</p> <p>13 A. That's what's happening with this funds</p> <p>14 flow, yes.</p> <p>15 Q. Okay. So Plain Green is providing money,</p> <p>16 but it just goes through the -- through Haynes</p> <p>17 Investment first?</p> <p>18 MR. SCHEFF: Object to the form.</p> <p>19 BY MR. ACKELBERG:</p> <p>20 Q. Am I right?</p> <p>21 A. That was the structure that was set up.</p> <p>22 Q. Okay. Do you know why that structure was</p> <p>23 set up?</p> <p>24 A. I do not.</p> <p>25 Q. Did you ever ask anybody, "Why -- why don't</p>	<p style="text-align: right;">Page 87</p> <p>1 agreements in place between Plain Green and the</p> <p>2 Think Finance entities that would charge those</p> <p>3 charges. There were also agreements in place</p> <p>4 between the VPC entities and Plain Green that they</p> <p>5 would be reimbursed for expenses related to their</p> <p>6 participations.</p> <p>7 BY MR. ACKELBERG:</p> <p>8 Q. Right. Okay. And -- and so with regard to</p> <p>9 the tribal entities, the -- the expenses charged by</p> <p>10 TailWind or Decision Sciences would not actually, in</p> <p>11 a -- in a real way, be paid by the tribe, it was</p> <p>12 really just money in, money out?</p> <p>13 MR. SHELDON: Object to form.</p> <p>14 MR. SCHEFF: Object to the form.</p> <p>15 A. They were paid by the tribe. The tribe</p> <p>16 just happened to get reimbursement for the expenses</p> <p>17 due to their arrangement for the participation</p> <p>18 sales.</p> <p>19 BY MR. ACKELBERG:</p> <p>20 Q. Right. But what I -- what I remember when</p> <p>21 we were looking at the Universal Fund -- and we'll --</p> <p>22 we'll take a look at some of the -- the actual GPLS</p> <p>23 and -- and tribal reports later. But -- but as I</p> <p>24 recall from when we looked at Universal, that the</p> <p>25 charges made by TailWind and TC Decision Sciences to</p>
<p style="text-align: right;">Page 86</p> <p>1 we just give the money directly? Why do we have to</p> <p>2 run it through the -- through Haynes Investment</p> <p>3 first?"</p> <p>4 MR. SCHEFF: Object to the form.</p> <p>5 You can answer the question.</p> <p>6 A. I follow the documents that were agreed</p> <p>7 upon and signed.</p> <p>8 BY MR. ACKELBERG:</p> <p>9 Q. Okay. And on the left-hand side, that you</p> <p>10 have the -- so we have TailWind and -- and TC</p> <p>11 Decision Sciences. They're -- they're the entities</p> <p>12 that are invoicing Plain Green on a monthly -- on a</p> <p>13 monthly basis for the fees charged to Plain Green,</p> <p>14 right?</p> <p>15 A. Correct.</p> <p>16 Q. Now, those are all charges that we -- I</p> <p>17 know we were looking previously at the Universal</p> <p>18 Fund financial statement, not the GPLS fund</p> <p>19 statement. But am I right that in the GPLS</p> <p>20 structure, the expenses work the same way, that they</p> <p>21 end up getting reimbursed every month by the</p> <p>22 investment structure; in this case, GPLS?</p> <p>23 MR. SCHEFF: Object to the form.</p> <p>24 MR. SHELDON: Object to form.</p> <p>25 A. That's correct. Because there were</p>	<p style="text-align: right;">Page 88</p> <p>1 First Bank of Delaware back then, were effectively,</p> <p>2 from the standpoint of the -- of the investment,</p> <p>3 which in -- which in that case was Universal, they</p> <p>4 were just reim- -- those are -- those were just</p> <p>5 charges that were reimbursed by -- by the investment</p> <p>6 structure; in that case, Universal, right?</p> <p>7 MR. SCHEFF: Object to the form.</p> <p>8 MR. SHELDON: Object to form.</p> <p>9 A. Again, you have to -- you can't look at</p> <p>10 that as a -- and skip all the pieces in between.</p> <p>11 The deals are structured in a format that affords</p> <p>12 the best tax advantage, the best accounting</p> <p>13 advantage, and the best economic advantage for all</p> <p>14 the parties that agree to the contracts, and you</p> <p>15 need to follow the funds flow the way that it's</p> <p>16 designed.</p> <p>17 It was designed that services provided by</p> <p>18 Think Finance were provided to the tribe that was</p> <p>19 doing the lending, and we charged them for our</p> <p>20 services for those particular items. They arranged</p> <p>21 an agreement with VPC to buy participations in their</p> <p>22 loans, and they also agreed to get reimbursed on the</p> <p>23 expenses.</p> <p>24 BY MR. ACKELBERG:</p> <p>25 Q. Would --</p>

1 A. So you're skipping a whole step when you
2 say it's this and then it's this. It's like, no,
3 the money needed to move in accordance with the way
4 the deal was structured because it had valid
5 business purposes.

6 Q. Okay. And -- and what is the -- the
7 business purpose, as far as you understand, for --
8 and let's take -- let's take a TailWind marketing
9 charge to Plain Green. So the system is that the
10 marketing charge is invoiced by TailWind to the
11 tribe, to Plain Green, right?

12 A. Yes, sir.

13 Q. And then there's another invoice for the
14 same amount, Plain Green back to GPLS, right?

15 A. That's correct.

16 Q. And it's the Think Finance finance
17 department that prepares both of those
18 simultaneously; am I right?

19 A. As our role as an admin agent and back
20 office.

21 Q. So that's a "yes," right?

22 A. Yes.

23 Q. Okay. And so -- and on the same day that
24 money goes -- would -- the -- the same day that the
25 money -- well, so the money would -- the actual cash

1 accounts. We would do a wire setup, get approval
2 from them, and then we would release the wire. And
3 it takes two people. The same person can't set it
4 up and release it.

5 In the case of VPC, we had access to set
6 up wires on their accounts. We would set them up,
7 send them -- send them copies of the invoices, let
8 them know the wires were ready, and they would
9 actually release them.

10 Q. All right. Thank you.

11 Now, going back to page 7 of the exhibit.
12 There's reference to an entity we haven't talked
13 about before, Think Finance SPV. And why don't you
14 explain what that is.

15 A. I don't really recall what it was right
16 now. It's been too long.

17 Q. Was there an entity within Think Finance
18 that was actually purchasing shares in the GPLS
19 fund, much like it was previously -- like Think was
20 purchasing in the Universal Fund?

21 A. Okay. I think that's correct.

22 Q. Okay. So -- so Think Finance SPV would
23 have been another entity within -- within Think
24 Finance that was actually purchasing shares in GPLS?

25 A. In one of the GPLS entities, yes.

1 flows connected to those -- they would -- they would
2 actually be cash transfers connected to those double
3 invoices, right?

4 MR. SCHEFF: Object to the form.

5 A. That's correct.

6 BY MR. ACKELSBURG:

7 Q. And so there -- there would be a -- there's
8 a reimbursement going from GPLS to the tribal
9 account, and a payment from the tribal account to
10 TailWind?

11 A. That would be correct.

12 Q. Okay. And all of that is managed by, I
13 think -- I'm trying to remember who -- who Linda
14 Callnin told us. But you tell us, who -- who would
15 handle -- so who -- who were the people that did the
16 invoicing?

17 A. Think Finance employees. So normally, it
18 would have been one of the -- either be one of the
19 controllers, such as David Gentry, or one of the
20 accountants.

21 Q. And then who would do the actual fund
22 transfers?

23 A. So that was a variety of people. For
24 this -- for the Plain Green tribe, initially it
25 was -- they had us set up to have access to their

1 Q. Okay. And -- and then you also have the --
2 on the left side, "TC Admin Services," or TCAS, I
3 think as it's known. And that performed the role
4 that it -- that was basically the administrator of
5 GPLS pursuant to the contract between Victory Park
6 and Think Finance?

7 A. Correct.

8 Q. Okay. And the structure that -- that was
9 in place in -- in reality, not -- not in conception,
10 but just in the way it actually was, that -- what
11 TCAS did was, as in the Universal phase, it received
12 the residual slice of the waterfall at the end of
13 the month, representing all the money that's left
14 over after the payments at the higher end of the
15 waterfall were paid?

16 MR. SHELTON: Object to form.

17 MR. SCHEFF: Object to the form.

18 A. So you're calling it a waterfall? I
19 haven't heard that term.

20 BY MR. ACKELSBURG:

21 Q. Okay. That's all right. We don't need to
22 use that.

23 A. But it's the residual.

24 Q. Yeah. Okay.

25 And let's look at the -- the last page,

<p style="text-align: right;">Page 93</p> <p>1 page 8. So why don't you explain what this -- what 2 this tab is representing.</p> <p>3 A. This is -- this is Linda's view, me, okay, 4 of how things kind of should work business-wise. 5 This isn't how they necessarily are expected to run 6 their business, but this is just me looking at cash 7 and trying to give the tribe an overview of my 8 thought process of how and where the money was 9 rolling through and from and to.</p> <p>10 So in this case, I said if, in the case of 11 the prior diagram, funds were provided to Plain 12 Green tribe from Haynes Trust -- and that's the 13 example in this -- in this original one. So they -- 14 they fund the loans of 2 million -- \$2,000. GPL 15 comes in and buy -- GPLS comes in and buys the 16 participation for 99. So the Plain -- Plain Green 17 tribe now, two days later, is out their \$20 for that 18 initial funding of those loans.</p> <p>19 If they get collections in -- the next 20 column is -- next section is a collection example. 21 If they get collections in of \$2 million on the 22 principal, and they've got collection -- and they 23 have to give that principal back to GPLS for their 24 participation that they're going to get their money 25 back for. And then Plain Green ended -- ends up</p>	<p style="text-align: right;">Page 95</p> <p>1 from the standpoint of the reporting that you're 2 doing to Plain Green, you -- that's not something 3 that -- that you would report to them, that's -- 4 that's between them and Mr. Haynes, right?</p> <p>5 A. That's correct.</p> <p>6 Q. And -- and you're just trying to be helpful 7 and to -- to tell them: Don't assume that this 8 1 percent is really all just -- is cash that can be 9 spent. As a -- from a business standpoint, you have 10 to take account for the liability that you also 11 have?</p> <p>12 MR. SCHEFF: Object to the form.</p> <p>13 A. That -- that was my -- that was my -- what 14 I was trying to convey.</p> <p>15 BY MR. ACKELSBURG:</p> <p>16 Q. And I -- I take some -- maybe I'm -- I'm 17 reading too much into your answer, but did you have 18 some degree of frustration with the business sense 19 that -- that you were seeing from the Plain Green 20 side?</p> <p>21 MR. SCHEFF: Object to the form.</p> <p>22 A. No. I think that where I was at is that I 23 live in the weeds. Both -- Billi Anne was the one -- 24 one of the people here, and I think Bobbi was new. 25 So Billi Anne was trying to make sure Bobbi</p>
<p style="text-align: right;">Page 94</p> <p>1 with \$20 of principal returned.</p> <p>2 Then the next line goes into the 3 collection. So if interest is collected on the loan 4 of 3,000, GPLS Servicing gets their 99 percent, and 5 Plain Green retains their 1 percent. So \$30 of 6 that.</p> <p>7 So my thought process to them was to make 8 sure they were thinking about the fact that they had 9 a loan outstanding to -- to Haynes Capital, and that 10 realistically, they needed to look at -- I mean, 11 they needed to be looking at their business from a 12 perspective of where are the funds going to come 13 from for them to pay back their loan and what are 14 they ultimately going to have left over at the end 15 of the day. And that's what the bottom section is 16 trying to explain to them.</p> <p>17 Q. Because -- and let me -- let me make sure I 18 understand what you're saying. So -- so the money 19 that -- that reflects their 1 percent -- their 20 1 percent interest in the -- in the loans made, out 21 of that, they still have to somehow pay -- pay back 22 Haynes?</p> <p>23 A. Right, they have a liability on their 24 books.</p> <p>25 Q. Okay. And -- and you're not -- you're not --</p>	<p style="text-align: right;">Page 96</p> <p>1 understood it. But this was me trying to give them 2 a little taste of the weeds so that they would 3 understand when we're sending them stuff, you know, 4 where our brains are coming from. Billi Anne 5 obviously was, you know, a 50,000 view, and people 6 that do the financials are in the weeds.</p> <p>7 BY MR. ACKELSBURG:</p> <p>8 Q. At this point in time, in 2012, was 9 there -- do you recall, was there anyone at -- at 10 Plain Green who was doing financials for them?</p> <p>11 A. I don't know who was doing their 12 financials. I -- I know they were preparing 13 something, but I didn't ever see it. I provided to 14 them their -- the program financial piece that we 15 had insight to, and they would incorporate that with 16 their own financials.</p> <p>17 Q. Did the other tribal structures -- and I'm 18 referring to Great Plains Lending and Mobiloans. 19 Did they work in a similar fashion?</p> <p>20 MR. SCHEFF: Object to the form.</p> <p>21 A. No, they did not.</p> <p>22 BY MR. ACKELSBURG:</p> <p>23 Q. Okay. So let's start with Great Plains 24 Lending, and tell me how that one differed.</p> <p>25 A. Great Plains, I -- and I'm not going to</p>

<p style="text-align: right;">Page 97</p> <p>1 remember all the specific details, but both Great 2 Plains Lending and Mobiloans had built into their 3 agreements a deposit reserve concept. And I can't 4 tell you the specifics without going and looking at 5 the agreements. 6 Q. Okay. And so if we were -- if -- if you 7 had prepared a chart, the equivalent chart, 8 equivalent spreadsheet, a high level discussion and 9 a cash flow diagram for -- for Great Plains Lending 10 or Mobiloans, you would need to have taken account 11 for the reserve requirement? 12 A. Yes. 13 Q. Okay. And -- and I assume that Mr. Haynes 14 was not an intermediary for the -- the initial 15 funding capital on -- for the other two tribal 16 entities? 17 MR. SHAPIRO: Object to form. 18 MR. SCHEFF: Object to the form. 19 A. Not -- to my knowledge, he wasn't involved 20 in any of it. 21 BY MR. ACKELSBURG: 22 Q. Do you know where the initial funding 23 capital came for Great Plains Lending? 24 A. Part of the deposit reserve. 25 Q. Okay. And what about the other part?</p>	<p style="text-align: right;">Page 99</p> <p>1 A. Yes. Their -- and their depo- -- I 2 remember their deposit reserve sections were 3 different in the calculations, but I don't remember 4 why -- how or why they were different. 5 Q. Okay. So -- so let me make sure I got this 6 straight. With regard to Plain Green, the 1 percent 7 funding capital was coming from the money that they 8 got from Haynes, that Haynes got from Think Finance? 9 A. I would assume, yes. I mean, I don't know 10 what else Haynes had access to funds for or whether 11 he got money from other people than Think Finance, 12 cash fungibles. So -- the amounts we moved to them, 13 they moved. So I would say yes. 14 Q. Right. So just -- so to be clear, I mean, 15 you had access to the Haynes account, as well, for 16 Plain Green; am I right? 17 A. Yes. 18 Q. So -- so it was actually the Think Finance 19 finance staff that would move money, with regard to 20 Plain Green, from a Think Finance account to a 21 Haynes account to a Plain Green account? 22 A. As admin agent, yes. 23 Q. With regard to Great Plains Lending and 24 Mobiloans, some portion of that 1 percent was 25 actually a transfer from GPLS to the respective</p>
<p style="text-align: right;">Page 98</p> <p>1 A. I mean, that -- I don't know -- I don't 2 know where -- I don't know what or how they handle 3 their funding. I just saw the piece that came from 4 the deposit reserve. 5 Q. And -- and was the deposit reserve 6 something that was managed by the Think Finance 7 staff, the Think Finance finance department? 8 MR. SHELTON: Object to form. 9 A. We did analyses related to it. 10 BY MR. ACKELSBURG: 11 Q. And did the -- and did you also do fund 12 transfers -- or were you involved in the fund 13 transfers in order to maintain that reserve 14 requirement? 15 A. We would have been involved in the 16 initiation of setting up wires related to that. 17 Q. Okay. Which would then have to be approved 18 by the tribe? 19 A. Well, no. That would be -- the ones we 20 were involved in would have been approved by GPLS. 21 Q. Oh, okay. So were the -- were the reserves 22 being provided by GPLS? 23 A. As part of the document, yes. 24 Q. Okay. So -- and this is true of both Great 25 Plains Lending and Mobiloans?</p>	<p style="text-align: right;">Page 100</p> <p>1 tribal entity? 2 A. As a deposit reserve. 3 Q. So that's "yes," right? 4 A. Well, I mean, it's -- was transferred as a 5 deposit reserve. The overall intent of the deposit 6 reserve was due to the fact that GPLS had a right to 7 stop buying participations at any point in time, and 8 they would buy them two days out. 9 So the calculations were designed to 10 ensure that if the tribe had made loans, that they 11 would have the money to buy -- to cover the 12 participations for the two days, and then they 13 would -- they either stopped lending or find some 14 other source of participations if they needed -- if 15 they wanted to do more loans. 16 So it was by design to make sure that 17 everybody had their rights in place. 18 Q. We were -- the -- the exhibit that -- the 19 Plain Green exhibit we were looking at with the 20 e-mail was from November 2012. At this point in 21 time, were you still reporting to Angela? 22 A. I don't know. Angela left somewhere in 23 there, and I -- I'm bad with dates. 24 Q. Okay. So when Angela left, who was your 25 direct re- -- who did you report to?</p>

<p style="text-align: right;">Page 101</p> <p>1 A. I reported to Chris Lutes for a very narrow 2 period of time, and then they brought Chad Bradford 3 on. So I don't remember what the length of time was 4 there. 5 Q. And -- and Bradford was as chief accounting 6 officer? 7 A. Correct. 8 Q. Okay. Now, how did you learn the -- the 9 specific differences between -- for example, on -- 10 we were just talking about the funding of new loans. 11 How did you learn about the different structure that 12 applied to Great Plains Lending and Mobiloans? 13 A. From reading the documents. 14 Q. So you would actually read the -- the 15 contracts themselves, and -- and then come up with 16 the -- the cash flow that met the contracts? 17 A. That's correct. I would come up with 18 the -- like, these diagrams. And then they would be 19 passed around, and people would say they agree, 20 don't agree. Go back and talk to the lawyers, make 21 sure we were all on the same page. It's always a 22 negotiation. 23 Q. I see. 24 A. And that's from past business experience. 25 That's just the way it works.</p>	<p style="text-align: right;">Page 103</p> <p>1 would have to review them and report back to 2 somebody about your reading of that and -- and the 3 cash flow systems that you -- that based on your 4 reading, you would be putting in place? 5 A. Correct. 6 Q. And then they would either tell you correct 7 or not correct, and you'd make the necessary 8 adjustments? 9 A. Correct. 10 Q. But it required you to keep up-to-date on 11 the contracts as they were amended from time to 12 time? 13 A. Yes, once they were complete. 14 Q. And how did the process work to let you 15 know that the contracts were being amended? 16 A. They would tell me they had a new contract. 17 Q. Who's "they"? 18 A. Either Angela or Chris. 19 Q. Okay. But after -- after Angela left, it 20 would have been Chris? 21 A. It would have been Chad. 22 Q. Okay. All right. I'm going to show you a 23 new document. 24 MR. ACKELSBURG: Just a little bit of 25 housekeeping. Are we -- should we shoot for 12:30</p>
<p style="text-align: right;">Page 102</p> <p>1 Q. So -- 2 MR. SHELDON: Ms. -- Ms. Rogenski, I 3 just want to remind you that in any answer you 4 provide to Mr. Ackelsberg today, or any other lawyer 5 today, don't reveal communications with lawyers. 6 Okay? 7 THE WITNESS: Okay. 8 MR. SHELDON: Thank you. 9 BY MR. ACKELSBURG: 10 Q. So -- so the process, as I understand it, 11 would be -- let me -- let -- strike that, and I'll 12 start again. 13 The contracts with regard to the tribal 14 products evolved over time; am I right? 15 A. Yes. 16 Q. So there were occasional amendments to the 17 participation agreements, right? 18 A. Correct. 19 Q. And similar amendments to the 20 administrative agency agreement? 21 A. Correct. 22 Q. And -- and the guarantee and security 23 agreements? 24 A. Correct. 25 Q. And -- and whenever that happened, you</p>	<p style="text-align: right;">Page 104</p> <p>1 again, or what's -- would people like a -- 2 MR. SCHEFF: My guess is that they're 3 going to bring lunch in around 12:30. 4 MR. ACKELSBURG: Okay. And can -- 5 just to take -- before I start another exhibit, do 6 you -- does anyone need a break, or -- 7 MR. SCHEFF: I could use two minutes. 8 MR. ACKELSBURG: Okay. 9 THE VIDEOGRAPHER: We are off the 10 record. The time is 11:28 a.m. 11 (Break taken, 11:28 a.m. to 11:39 a.m.) 12 THE VIDEOGRAPHER: We are back on the 13 record. The time is 11:39 a.m. 14 BY MR. ACKELSBURG: 15 Q. Ms. Rogenski, before I show you this next 16 exhibit, I want to ask you about a prior answer you 17 gave. 18 MR. ACKELSBURG: If counsel can refer 19 back on -- and scroll back to page 74 and 75. Let's 20 start with -- I've got to say, this technology is 21 amazing now. 22 MR. SCHEFF: So we're on 87 now? 23 MR. ACKELSBURG: I'm still from the 24 old school. I just -- 25 MR. SCHEFF: Seventy -- I'm sorry,</p>

<p style="text-align: right;">Page 117</p> <p>1 Q. Okay. So this is a document -- do you 2 remember who prepared it? 3 A. It's -- it's been prepared by many people. 4 I think you said earlier that Adam Ackerman was the 5 last author, so maybe Adam updated it last. 6 Q. And who is Adam? 7 A. He was an accountant. 8 Q. Okay. So am -- am I right, this is a 9 document that was used within the finance department 10 in its day-to-day operations? 11 A. Correct. 12 Q. Okay. And it was used to -- to reflect the 13 duties of the -- of the finance department with 14 regard to cash transactions that might need to be 15 done on a daily basis? 16 MR. SHELDON: Object to the form. 17 You can answer the question. 18 A. This was -- this is the document that's 19 designed to -- of what information to gather and 20 where to gather it from to put on a spread that 21 tracks all of the daily stuff for us then to 22 determine if the right balances are in the right 23 place. 24 BY MR. ACKELSBURG: 25 Q. Do you remember people within the finance</p>	<p style="text-align: right;">Page 119</p> <p>1 all the confidential documents until -- until the 2 judge rules otherwise. That's -- I mean, that's 3 true of this document and any -- 4 MR. SHELDON: I believe he was noting 5 the difference between just a "confidential" stamp 6 and a "confidential, attorneys' eyes only" stamp. 7 MR. ACKELSBURG: I -- I don't know 8 what the difference means. 9 MR. SHAPIRO: Is it -- is it your 10 position, the documents marked confidential in these 11 depositions cannot be shared with anybody who's not 12 a party to this case? 13 MR. ACKELSBURG: Well, it's our 14 position that -- 15 MR. SHAPIRO: Because that's our 16 position. 17 MR. ACKELSBURG: Well, it's the 18 position that anyone within the confidentiality 19 agreement -- it's just governed by the -- the 20 confidentiality protective order from June of last 21 year -- or 2016. And if there are specific issues 22 that you want to talk to us about -- I mean, that 23 includes the -- the experts, the -- I mean, if 24 you're -- you're talking about outside the case? 25 MR. SHAPIRO: Yes.</p>
<p style="text-align: right;">Page 118</p> <p>1 department actually using this document to guide 2 their work over the course of a day? 3 A. Treasury would usually use this document to 4 guide their work. 5 Q. Okay. All right. That's -- that's it on 6 that -- on that document. 7 I'm going to show you a document now that 8 was also used in the Callnin deposition and 9 premarked as P-31. I'm sorry for the small print, 10 but just the way it was produced. 11 A. (Reviews document.) 12 Okay. 13 Q. What is Exhibit P-31? 14 A. Appears to be an e-mail that started with 15 VPC asking Chris a question about control on bank 16 accounts for the tribes. 17 Q. And where -- 18 MR. SHAPIRO: Just for the record, 19 this is marked -- this is GPL's production. This is 20 our production marked confidential, attorneys' eyes 21 only. So under the protective order in this case, I 22 think we would restrict the movement of this 23 document outside of this case to be shared with 24 anybody else. 25 MR. ACKELSBURG: Well, that's true of</p>	<p style="text-align: right;">Page 120</p> <p>1 MR. ACKELSBURG: Meaning the -- the 2 creditors' committee? 3 MR. SHAPIRO: Yes. 4 MR. ACKELSBURG: Okay. I don't know 5 what the agreement is between the creditors' 6 committee and Hunton & Williams, so I have -- I have 7 not shared any documents that are marked 8 confidential with the creditors' committee at this 9 point in time, and -- and I don't -- I am aware that 10 there are some disputes about that, and so -- so at 11 some point, I -- I assume I will be asked to share 12 some documents with the creditors' committee. If -- 13 if there are special rules that are attached to 14 that, you need to let me know, because I don't -- 15 I'm not party to those discussions. 16 MR. SCHEFF: I think that what can be 17 done, and I -- I think -- because I don't have a 18 protective order in front of me, so perhaps I'm 19 speaking out of -- I think there's a certain amount 20 of time -- 21 MR. ACKELSBURG: Yes. 22 MR. SCHEFF: -- after the transcript 23 is prepared that any party can designate testimony 24 as being confidential and can't go anywhere. And 25 so, obviously, Mr. Ackelsberg, until that time</p>

1 period passes, you're not sharing anything with
 2 anyone.
 3 MR. ACKELSBURG: Exactly.
 4 MR. SCHEFF: Thank you.
 5 MR. ACKELSBURG: Dan, can we move on,
 6 or is there anything else you need to clarify on the
 7 record?
 8 I would say to -- to counsel that given
 9 that -- that there are these -- that there's this
 10 other -- this other proceeding that's going on, and
 11 if -- you should talk to me if -- if you're
 12 concerned about -- I mean, I -- you know, I want to
 13 make sure that I'm getting the right information
 14 from creditors' committee counsel. If there's -- if
 15 there's some disputes there, I certainly don't want
 16 to do anything inconsistent with my obligations
 17 under -- under the confidential --
 18 MR. SCHEFF: We understand that.
 19 MR. ACKELSBURG: Yeah.
 20 MR. SHAPIRO: For the moment -- and we
 21 will be in touch with you on this. For the moment,
 22 please don't share this outside of this case. And
 23 we'll be in touch with you on this document to let
 24 you know whether that -- our position has changed on
 25 that or -- or not.

1 MR. ACKELSBURG: But with regard to
 2 other documents, I can tell you that just -- there
 3 was a representation made to me by -- by counsel for
 4 the creditors' committee that there is an
 5 understanding between him and Hunton Williams
 6 that -- that documents marked confidential in our
 7 case could be shared.
 8 Now, I have not -- I have not shared
 9 anything at this point, but I -- I'm trying to
 10 remember what -- what was said. There certainly was
 11 nothing explained in terms of any difference between
 12 "confidential" or "confidential, attorneys' eyes
 13 only." And so since nothing has been exchanged, I
 14 would just ask you to clarify what --
 15 MR. SHAPIRO: That's fair.
 16 MR. ACKELSBURG: Yeah.
 17 MR. SHAPIRO: So until we've had a
 18 chance to do that, though, you won't share any of
 19 these documents?
 20 MR. ACKELSBURG: Yes, I -- I promise
 21 that.
 22 MR. SHAPIRO: Okay.
 23 MR. SHELTON: And let me just state
 24 for the record that I -- I think at least in some
 25 instances, there's been some confusion between

1 counsel for the creditors' committee as to what the
 2 agreements with Hunton have been as to the sharing
 3 of documents. And so before you share any
 4 documents, I would just ask you to confer with
 5 myself or confer with Hunton Williams to make sure
 6 that everyone is on the same page.
 7 MR. ACKELSBURG: I think I've already
 8 said that I -- that I would do that.
 9 MR. SHAPIRO: That's fine. Thank you.
 10 BY MR. ACKELSBURG:
 11 Q. So -- sorry, Ms. Rogenski, for the -- for
 12 the lawyer distractions, but let's go -- you know,
 13 now it's back to you.
 14 So this started as an inquiry from Victory
 15 Park to Chris Lutes, right? Or --
 16 A. That's what it appears to be.
 17 Q. Okay. And then it -- it's an inquiry
 18 where -- where an investor is -- is asking for the
 19 mechanics: How is it that Think Finance has actual
 20 control over the -- the tribal bank accounts, right?
 21 That's what. . .
 22 A. That's what it appears to be asking.
 23 Q. Okay. And so then Chris refers that to you
 24 for you to help them understand how that actually
 25 works?

1 A. Yes.
 2 Q. Okay. And as I understand, your answer is
 3 that the control that -- that Think Finance finance
 4 department has over the accounts titled in the name
 5 of the tribal entities is not through the account
 6 contract -- the account agreements themselves, but
 7 rather, through some administrative -- separate
 8 administrative agreement that Think has with Wells
 9 Fargo at this point in time?
 10 A. Access to the administrative portal.
 11 Q. And what does that mean, "administrative
 12 portal"?
 13 A. That when you do online banking with Wells
 14 Fargo, you are required to use a product they call
 15 CEO, which is their client electronic something.
 16 And that's where all of your accounts are housed and
 17 that's where you set any kind of limits, where you
 18 put positive pay or you say who's authorized to --
 19 to set up a wire or release a wire, all that -- all
 20 that type of information, and to look at account
 21 balances in detail.
 22 Q. And so the -- the criteria with regard to
 23 access in -- in the various accounts that were
 24 administered through the CEO portal, that was
 25 determined by agreement between Think Finance and

<p style="text-align: right;">Page 125</p> <p>1 Wells Fargo?</p> <p>2 MR. SHELDON: Object to form.</p> <p>3 A. Yes, I would say that was an agreement with</p> <p>4 Think Finance -- it was Think Finance's CEO portal,</p> <p>5 yes.</p> <p>6 BY MR. ACKELSBURG:</p> <p>7 Q. So we previously -- well, strike that.</p> <p>8 I'm going to show you one another</p> <p>9 document, and then I think it will be a good time to</p> <p>10 break for lunch.</p> <p>11 A. Are we finished with this one, sir?</p> <p>12 Q. Yes. For the time being, yes.</p> <p>13 (Exhibit No. 158 marked.)</p> <p>14 MR. SCHEFF: What number is this?</p> <p>15 MR. ACKELSBURG: 158.</p> <p>16 BY MR. ACKELSBURG:</p> <p>17 Q. We're looking at a bank statement from</p> <p>18 Wells Fargo with regard to the Plain Green</p> <p>19 collection account; am I right?</p> <p>20 A. Correct.</p> <p>21 Q. And this is from January of 2014?</p> <p>22 A. Yes.</p> <p>23 Q. And the address that appears to be the</p> <p>24 mailing address for the account is the office of</p> <p>25 Think Finance. Am I right?</p>	<p style="text-align: right;">Page 127</p> <p>1 A. Yes, they did.</p> <p>2 Q. And did they have -- so -- and was that</p> <p>3 true for all three of the tribes?</p> <p>4 A. No. Only Plain Green had accounts at Wells</p> <p>5 Fargo.</p> <p>6 Q. Okay. And with regard to Plain Green, they</p> <p>7 had access. Did -- did the tribes themselves, as</p> <p>8 far as you know, have the ability -- I'm sorry,</p> <p>9 we're just talking about Plain Green. Did Plain</p> <p>10 Green have the ability, itself, to go into the</p> <p>11 portal and wire money without Think Finance's</p> <p>12 involvement?</p> <p>13 A. Without looking back at the specifics on</p> <p>14 the -- the setup, I don't know the answer. It does</p> <p>15 take two people, one to set up, one to release.</p> <p>16 Q. Okay. But -- so --</p> <p>17 A. Typically, we would set them up, and they</p> <p>18 would go in and release.</p> <p>19 Q. And when they release, would they be doing</p> <p>20 that through the portal?</p> <p>21 A. Yes.</p> <p>22 Q. Okay. So it -- so in a typical wire</p> <p>23 transfer, it would have required a setup on the</p> <p>24 Think Finance side, and then an actual release from</p> <p>25 the Plain Green side?</p>
<p style="text-align: right;">Page 126</p> <p>1 A. That's the address on the -- on the report.</p> <p>2 Q. And is -- was that the procedure for</p> <p>3 monthly bank statements, that Wells would send --</p> <p>4 we're talking about Plain Green at the moment --</p> <p>5 would send the bank statements to Think Finance?</p> <p>6 A. I don't know if they mailed these or if we</p> <p>7 went online and printed them out.</p> <p>8 Q. Okay. But they were -- what we're looking</p> <p>9 at here, TF-PA-454501, is an example of a bank</p> <p>10 statement that -- during the period of time that</p> <p>11 Wells was the bank handling the Plain Green</p> <p>12 accounts, this is the way it was reported out by</p> <p>13 Wells Fargo: Plain Green, LLC, collection account,</p> <p>14 in care of -- well, with an address of the Think</p> <p>15 Finance office?</p> <p>16 A. That's correct.</p> <p>17 Q. And we're looking at the collection</p> <p>18 account. Am I right that the funding account would</p> <p>19 have been done the same way?</p> <p>20 A. Without seeing it, but I would say yes,</p> <p>21 because they were all under the Think Finance CEO</p> <p>22 umbrella.</p> <p>23 Q. And the tribes did not have access to</p> <p>24 the -- to the CEO portal at -- at Wells Fargo, did</p> <p>25 they?</p>	<p style="text-align: right;">Page 128</p> <p>1 A. That would be correct.</p> <p>2 Q. Okay. All done through the Wells portal?</p> <p>3 A. That would be correct.</p> <p>4 Q. Okay. And how did the movement of money</p> <p>5 work with regard to Great Plains Lending?</p> <p>6 A. It changed over time. For the most part,</p> <p>7 they handled most of the their wires on their own.</p> <p>8 We would do the setup, and -- or they would do the</p> <p>9 setup, and then they would release. Meaning, Great</p> <p>10 Plains sometimes set up their own wires and released</p> <p>11 them, and sometimes we set them up, and they release</p> <p>12 them.</p> <p>13 Q. So there were times when Great Plains would</p> <p>14 release wires that Think Finance was not -- not</p> <p>15 playing a role?</p> <p>16 A. Yes.</p> <p>17 Q. And did that include transfers to Great --</p> <p>18 to GPLS?</p> <p>19 A. I wouldn't know without looking at some of</p> <p>20 the transactions, but I would say no.</p> <p>21 Q. Okay. So what kinds of transactions could</p> <p>22 Great Plains Lending do out of their -- their</p> <p>23 accounts -- and we're talking about the funding and</p> <p>24 collection accounts, right?</p> <p>25 A. Yes.</p>

<p style="text-align: right;">Page 129</p> <p>1 Q. Okay. So what was the extent of Great 2 Plains Lending's ability to move money in and out of 3 the funding or collections account by themselves 4 without Think Finance?</p> <p>5 A. They were their accounts. They could move 6 anything they wanted to move.</p> <p>7 Q. Your previous answer said, though, that 8 they wouldn't have -- they wouldn't have done 9 anything on their own with regard to transfers to 10 GPLS.</p> <p>11 A. Not to my knowledge, because we always 12 coordinated that with them. Gave them the amounts, 13 and they would confirm them and then do the wires.</p> <p>14 Q. Okay. So you were involved in some fashion 15 at least with regard -- "you," I mean the Think 16 Finance finance people -- were involved in any -- in 17 any wire transfer that involved GPLS?</p> <p>18 A. Yes.</p> <p>19 Q. What about with Mobiloans?</p> <p>20 A. Mobiloans, at different points in time, it 21 was different. The ultimate, I think, ending 22 position was that we would set up the wires, notify 23 them, and they would release them.</p> <p>24 Q. Okay. And you mentioned that the other two 25 tribal entities other than Plain Green did not --</p>	<p style="text-align: right;">Page 131</p> <p>1 Q. Were there situations where the Think 2 Finance finance people were waiting to get the 3 attention of the tribe to release, and it took a 4 while for that to happen?</p> <p>5 A. Yes.</p> <p>6 Q. Okay. How often did that happen?</p> <p>7 A. I can't even give you a percentage. It was 8 just occasionally.</p> <p>9 Q. Were there -- as between the three tribes, 10 were -- were there -- was there a tribe that was -- 11 I'm not sure what word to use -- delinquent or -- or 12 difficult for the -- for the Think Finance people in 13 terms of getting -- getting the proper release?</p> <p>14 A. I would say Plain Green, because they 15 had -- you know, they were in a remote location and 16 had weather issues and things at times.</p> <p>17 Q. So what would happen if -- let's say -- 18 now, did you -- did you need -- let's say you want 19 to make -- it's Plain Green, and there's money 20 sitting in the collections account, and you want to 21 transfer the 99 percent to GPLS. Right? And that's 22 at Citibank, right?</p> <p>23 A. Yes.</p> <p>24 Q. So were there -- so I want to be clear in 25 what -- what kind of a situation we're talking</p>
<p style="text-align: right;">Page 130</p> <p>1 their accounts were not in -- in Wells Fargo, right?</p> <p>2 A. Correct.</p> <p>3 Q. Did -- well, did the banks that the other 4 tribes use have an administrative portal similar to 5 Wells' CEO function?</p> <p>6 A. I am -- I do not know.</p> <p>7 Q. Okay. Because that was more on the 8 treasury side?</p> <p>9 A. No. Just because we had the -- we had the 10 CEO portal -- being Think Finance owned the CEO 11 portal relationship with Wells Fargo, and we brought 12 the Plain Green tribes in under our umbrella for 13 ease of administration. And the other two tribes 14 had their own banks, and I don't know how they had 15 their stuff set up. They added us to have access to 16 view and access to set up wires.</p> <p>17 Q. Okay.</p> <p>18 A. "Us" meaning various people on the Think 19 Finance team.</p> <p>20 Q. What would -- were there ever a 21 circumstance where -- that you know, where Think 22 Finance set up a wire, and -- and the tribal entity 23 did not release?</p> <p>24 A. I can't remember a specific time. That's 25 not to say it never happened.</p>	<p style="text-align: right;">Page 132</p> <p>1 about. Would that include situations where you and 2 Think Finance, in its capacity as the administrative 3 agent for VPC, is trying to get Plain Green to 4 release a wire that you've set up for the transfer 5 to GPLS for its 99 percent share? Would that be the 6 kind of context that -- that you're talking about 7 where there would be some -- some delay in getting a 8 response back from Plain Green?</p> <p>9 MR. SHAPIRO: Object to form.</p> <p>10 A. That could happen.</p> <p>11 BY MR. ACKELSBURG:</p> <p>12 Q. Okay. And so what was the procedure for -- 13 you know, in the situation where -- was there a way 14 that the wire could be released without the tribe 15 giving the okay?</p> <p>16 A. I'm sure there were occasions where the 17 wire was released prior to receiving okay from the 18 tribe when the wire cutoff time was approaching or 19 going to pass. Generally, if they couldn't release 20 their wires, they would, in e-mail, tell us -- or in 21 phone call, tell us, "It's okay. Go ahead and 22 release that for us. We can't get into the office."</p> <p>23 Q. Okay. And -- and were there times you 24 couldn't even get the e-mail back, and that you just 25 had to get -- had to get the wire to GPLS on your</p>

<p style="text-align: right;">Page 133</p> <p>1 own?</p> <p>2 A. Well, typically, we were more concerned</p> <p>3 with getting the wire to Intercept for funding the</p> <p>4 loans that night than we were for --</p> <p>5 Q. I see.</p> <p>6 A. -- making the other payments. The most</p> <p>7 critical wire was to make sure that loans that were</p> <p>8 committed to were funded.</p> <p>9 Q. And so what would happen in a situation</p> <p>10 where you're not getting -- you're -- no one at</p> <p>11 Plain Green is going onto the Wells portal to -- to</p> <p>12 release -- release the wire, right, and you're not</p> <p>13 getting any -- you're sending e-mails, you're not</p> <p>14 getting a response? There was still a capacity</p> <p>15 through the portal to -- to release the wire without</p> <p>16 them, wasn't there?</p> <p>17 A. In Plain Green's case, yes.</p> <p>18 Q. Okay.</p> <p>19 A. They had allowed that. They had us as</p> <p>20 their backup.</p> <p>21 Q. Okay.</p> <p>22 MR. ACKELSBURG: I think this is a</p> <p>23 good place -- good time to break for lunch.</p> <p>24 THE VIDEOGRAPHER: We are off the</p> <p>25 record. The time is 12:31 p.m.</p>	<p style="text-align: right;">Page 135</p> <p>1 A. (Reviews document.)</p> <p>2 BY MR. ACKELSBURG:</p> <p>3 Q. I like your sense of organization. I can</p> <p>4 see it.</p> <p>5 So let me ask, before -- before I ask you</p> <p>6 specifically about Exhibit 164, Ms. Rogenski, part</p> <p>7 of your responsibilities as -- in -- in the finance</p> <p>8 department was to send periodic reports to Victory</p> <p>9 Park. Am I right?</p> <p>10 A. To GPLS, yeah. And part of Victory Park.</p> <p>11 Q. When you say "to GPLS," what do --</p> <p>12 A. These were part of the -- a part of the</p> <p>13 compliance request from GPLS related to their</p> <p>14 investments in the different tribes.</p> <p>15 Q. But there's no --</p> <p>16 A. Or their participations in various tribes.</p> <p>17 Q. But when -- in order to comply with those</p> <p>18 reporting obligations to GPLS, you would send</p> <p>19 periodic reports to people who worked for Victory</p> <p>20 Park Capital. Am I right?</p> <p>21 A. Right. Because GPLS is one of their</p> <p>22 entities.</p> <p>23 Q. Okay. And -- and am I right that there was</p> <p>24 one set of reports that you would do on a weekly</p> <p>25 basis, and a different set of reports that you would</p>
<p style="text-align: right;">Page 134</p> <p>1 (Break taken, 12:31 p.m. to 1:11 p.m.)</p> <p>2 (Exhibit No. 162 marked.)</p> <p>3 THE VIDEOGRAPHER: We are back on</p> <p>4 record. The time is 1:11 p.m.</p> <p>5 MR. ACKELSBURG: All right. While we</p> <p>6 were off the record, we identified an exhibit, and</p> <p>7 then discovered that the -- the paginations of the --</p> <p>8 and Bates number are not in order, so we're going to</p> <p>9 try to rectify that and come back to Exhibit 162</p> <p>10 later on.</p> <p>11 All right. I'm going to. . .</p> <p>12 (Exhibit No. 164 marked.)</p> <p>13 MR. SHAPIRO: Is this 163?</p> <p>14 MR. ACKELSBURG: This is 164. I'm</p> <p>15 sorry. I put that on the exhibit, but I didn't -- I</p> <p>16 didn't say that out loud. I apologize.</p> <p>17 So what I'm -- what I'm doing is, as I've</p> <p>18 done in previous depositions, a lot of these --</p> <p>19 these basically were pre-numbered, and I'm trying --</p> <p>20 and I'm making some decisions on the fly to forget</p> <p>21 about documents I was going to use. So -- so</p> <p>22 forgive the lack of -- there are going to be some</p> <p>23 spaces here the rest of the day. So we're now</p> <p>24 looking at an exhibit that I've identified as</p> <p>25 Plaintiff's Exhibit 164.</p>	<p style="text-align: right;">Page 136</p> <p>1 do on a monthly basis?</p> <p>2 A. That's correct.</p> <p>3 Q. And are we looking now at 164 --</p> <p>4 Exhibit 164 as an example of the weekly reporting</p> <p>5 protocol that you had as part of your responsibility</p> <p>6 with regard to the -- the weekly reports that you</p> <p>7 sent to Victory Park?</p> <p>8 A. So --</p> <p>9 MR. SHAPIRO: Objection. You're</p> <p>10 mischaracterizing the testimony.</p> <p>11 BY MR. ACKELSBURG:</p> <p>12 Q. Okay. Well, why don't you tell us -- and</p> <p>13 I'll withdraw the question.</p> <p>14 Why don't you tell us what we're looking</p> <p>15 at here in -- in Exhibit 164.</p> <p>16 A. Part of the compliance for GPLS was for</p> <p>17 them to be able to look at the different -- all</p> <p>18 these -- all these different slides are telling</p> <p>19 different stories on different aspects. So the</p> <p>20 number of loans, the application, the new</p> <p>21 applications, the former applications, the first</p> <p>22 paid default rates. There's all kinds of</p> <p>23 information in here. And it was for their financial</p> <p>24 analyst to -- GPLS's financial analyst to look at</p> <p>25 and make sure that the investment was in target with</p>

<p style="text-align: right;">Page 237</p> <p>1 Q. And what's his job at -- what was his job 2 at Think Finance? 3 A. Compliance. 4 Q. What did that involve? 5 A. One, kind of ensuring a lot of our SOX 6 controls were in place and making sure that we 7 were -- that -- that the -- that everyone, the -- 8 the tribes, our direct lending, all of those items 9 were in compliance with the various state rules and 10 regulations. 11 Q. Okay. All right. Now, I want to refer you 12 to another exhibit. Let me -- let me jump to -- 13 well. . . All right. I'm going to show you a 14 document that we've labelled as Plaintiff's 15 Exhibit 175. 16 MR. SHELDON: Irv, it looks like this 17 chain is cut off at the top, it's the end of some 18 kind of signature block or warning. But just one 19 hanging line at the top. 20 MR. SCHEFF: Every page is the same. 21 MR. SHAPIRO: These were collated. 22 MR. ACKELSBURG: Okay. They're 23 collated. Why don't you give them back to me, and 24 I'll -- yeah, this is a -- this is a mistake. I'm 25 going to -- I'm going to jump exhibits, and -- and</p>	<p style="text-align: right;">Page 239</p> <p>1 identified as Plaintiff's Exhibit 176. Now, before 2 I ask you a question, do you recall, in addition to 3 McGladrey doing some review -- or -- well, actually, 4 let me -- let me back up and ask you another 5 question about McGladrey. 6 Do you know if McGladrey ever completed 7 their audit of Plain Green? 8 A. I wouldn't know. 9 Q. Did you ever see any evidence of a 10 completed audit of Plain Green? 11 A. They weren't ever required to provide that 12 to us, so I've never seen it. 13 Q. So you don't know one way or the other 14 whether they finished their audit? 15 A. No, I do not. 16 Q. Okay. In addition to getting requests from 17 McGladrey about -- about information that they 18 couldn't get directly from Plain Green, do you 19 remember also getting requests for information from 20 Charles River Associates? 21 A. Well, yes, because it's right here in front 22 of me. 23 Q. Well -- okay. 24 A. I don't -- I don't recall it, but looking 25 at this, I -- I -- it looks like I provided</p>
<p style="text-align: right;">Page 238</p> <p>1 we'll come back to 175. 2 Let's look at 176, and we'll come back to 3 175. 4 (Exhibit No. 176 marked.) 5 BY MR. ACKELSBURG: 6 Q. Let me -- let me look at that one too. Is 7 that -- are they all the same? 8 A. No. 9 Q. Let me -- let me take a look at that. 10 Okay. These are two different -- 11 MR. SHAPIRO: Yeah, these are -- the 12 Bates numbers don't -- 13 MR. ACKELSBURG: Yeah, I -- I 14 understand. I'm trying to -- I'm trying to figure 15 that out. 16 MR. SHAPIRO: Yeah, yeah. 17 MR. ACKELSBURG: All right. Take off 18 the last two pages. Just -- it's just -- the 19 exhibit will be the -- just the first two pages. 20 MR. SHAPIRO: Bates 535853 and 535854; 21 is that right? 22 MR. ACKELSBURG: 535853 and 54, yes. 23 BY MR. ACKELSBURG: 24 Q. All right. Sorry for the hiccup here. 25 So we're looking at a two-page exhibit</p>	<p style="text-align: right;">Page 240</p> <p>1 something to them. 2 Q. Okay. And do you remember what the role 3 was -- what role Charles River Associates was 4 playing? 5 A. I believe that they were brought in to try 6 to help them because of some -- some turnover that 7 they had -- 8 Q. "Them" being the tribes? 9 A. The tribe had some turnover in employees. 10 They brought Charles River in to bring some 11 temporary people in and help them get their books 12 and records caught up and organized. 13 Q. And -- and in looking at this, do you 14 remember providing Charles River some -- some backup 15 for information that they were trying to get with 16 regard to Plain Green? 17 A. That's clearly what is stated here, that I 18 provided financials and some bank statement 19 information. 20 Q. Well, what you're sending them are bank 21 statements, right? 22 A. Yes. 23 Q. Okay. So can we take it from -- from this 24 e-mail that -- that Think -- that Plain Green didn't 25 have bank statements?</p>

<p style="text-align: right;">Page 241</p> <p>1 MR. SHELDON: Object to form.</p> <p>2 A. If I remember correctly, as I said, they</p> <p>3 were really short-staffed, and since we had access</p> <p>4 to their bank accounts to pull the statements down,</p> <p>5 they asked if we could help them.</p> <p>6 BY MR. ACKELSBURG:</p> <p>7 Q. With regard to the paper statements from</p> <p>8 Wells Fargo, though, we've already established that</p> <p>9 those were mailed to -- to Think Finance; am I</p> <p>10 right?</p> <p>11 MR. SHELDON: Object to form;</p> <p>12 mischaracterizes prior testimony.</p> <p>13 BY MR. ACKELSBURG:</p> <p>14 Q. Am I right that with regard -- certainly</p> <p>15 with regard to the funding and the collections</p> <p>16 account?</p> <p>17 A. I think my comment earlier -- maybe I need</p> <p>18 to correct it. But I wasn't sure if they sent paper</p> <p>19 forms out or if we just pulled them down from the --</p> <p>20 Q. Oh, that's right.</p> <p>21 A. -- from the CEO.</p> <p>22 Q. That's right. So -- so --</p> <p>23 A. But they were under our umbrella. That's</p> <p>24 why the address was there.</p> <p>25 Q. Okay. So based on what you testified to</p>	<p style="text-align: right;">Page 243</p> <p>1 Billi Anne was still there at this time. I'm not</p> <p>2 sure. But I know they had several people that had</p> <p>3 access to that portal. I just think that they were</p> <p>4 so short-staffed, that they asked us to pitch in and</p> <p>5 help. They were approving wires. They had access</p> <p>6 to the portal.</p> <p>7 BY MR. ACKELSBURG:</p> <p>8 Q. And what about to the -- the invoice</p> <p>9 support for the December '12 P&Ls, how -- so the</p> <p>10 invoices that were prepared every month for the</p> <p>11 tribes, so, for example, the -- the TailWind charges</p> <p>12 and the TCDS charges, those were invoices that</p> <p>13 actually were prepared by -- by Think Finance,</p> <p>14 right?</p> <p>15 MR. SCHEFF: Object to the form.</p> <p>16 You can answer the question.</p> <p>17 A. Correct.</p> <p>18 BY MR. ACKELSBURG:</p> <p>19 Q. I mean, Think Finance would prepare the</p> <p>20 invoice for Plain Green to TailWind, and -- and also</p> <p>21 the reimbursement invoice from GPLS to -- to Plain</p> <p>22 Green, right?</p> <p>23 A. As admin agent, yes.</p> <p>24 Q. Okay. And were those invoices sent to the</p> <p>25 tribes?</p>
<p style="text-align: right;">Page 242</p> <p>1 this morning, I take it that Plain Green probably</p> <p>2 had the capacity -- that there was a way -- if</p> <p>3 someone knew how to work the -- the CEO portal,</p> <p>4 there was a way for someone there to pull those bank</p> <p>5 statements; am I right?</p> <p>6 MR. SCHEFF: Object to the form.</p> <p>7 BY MR. ACKELSBURG:</p> <p>8 Q. There should have been -- that should have</p> <p>9 been accessible to Plain Green, right?</p> <p>10 MR. SCHEFF: Object to the form.</p> <p>11 A. It -- it was accessible. I'm saying that</p> <p>12 they asked if we could help.</p> <p>13 BY MR. ACKELSBURG:</p> <p>14 Q. And -- and do you interpret this meaning</p> <p>15 that there was nobody on site at that point in time</p> <p>16 that knew how to do that at the tribal level?</p> <p>17 MR. SCHEFF: Object to the form. It's</p> <p>18 not been the testimony.</p> <p>19 BY MR. ACKELSBURG:</p> <p>20 Q. Isn't that what it -- what it suggests</p> <p>21 here?</p> <p>22 MR. SCHEFF: Object to the form.</p> <p>23 Go ahead.</p> <p>24 A. I'm not suggesting that there wasn't anyone</p> <p>25 there that knew how to do it, because -- I believe</p>	<p style="text-align: right;">Page 244</p> <p>1 A. Yes, they were.</p> <p>2 Q. Okay. In what form?</p> <p>3 A. E-mail, PDF.</p> <p>4 Q. Okay. Do you have any idea what the tribe</p> <p>5 did with those during this period of time when you</p> <p>6 were sending them every month?</p> <p>7 A. No, I do not.</p> <p>8 Q. Okay. Do you know, at this point in time,</p> <p>9 whether there was anyone at tribal level who had any</p> <p>10 understanding of the P&Ls and the invoicing and --</p> <p>11 and how, basically, the program worked?</p> <p>12 MR. SHELDON: Object to form.</p> <p>13 A. I believe they did.</p> <p>14 BY MR. ACKELSBURG:</p> <p>15 Q. And -- and who would have been those</p> <p>16 people?</p> <p>17 A. I believe it would have been probably some</p> <p>18 of the -- the tribal council members.</p> <p>19 Q. Can you think of anyone by name who -- who</p> <p>20 knew?</p> <p>21 A. I'm bad with names. And they all had</p> <p>22 really strange names. So, no.</p> <p>23 Q. Okay. So you think that some people on the</p> <p>24 tribal council knew how the P&Ls and the invoicing</p> <p>25 worked, but you're not sure -- you can't give us a</p>

<p style="text-align: right;">Page 245</p> <p>1 name of -- of who they might be?</p> <p>2 MR. SHELDON: Object to form.</p> <p>3 A. I mean, I can't remember their names.</p> <p>4 There were so many of them.</p> <p>5 BY MR. ACKELSBURG:</p> <p>6 Q. Okay. And -- and is it your testimony that</p> <p>7 many of them knew the details of how the -- how --</p> <p>8 how the P&Ls with regard to the Plain Green product</p> <p>9 worked?</p> <p>10 A. My understanding is that the tribal</p> <p>11 council, all those members knew how the program</p> <p>12 worked.</p> <p>13 Q. Well, they knew how much money was coming</p> <p>14 in every month, right?</p> <p>15 A. They got copies of the financials, and</p> <p>16 they -- I mean, they had them for their -- for their</p> <p>17 board meetings, or -- well, they didn't call them</p> <p>18 board meetings, but their tribal council meetings.</p> <p>19 Q. So all of the tribal -- all of those tribal</p> <p>20 council members would have known that -- that the</p> <p>21 tribe didn't have to pay any of the expenses, that</p> <p>22 the expenses were all essentially paid by the GPLS</p> <p>23 program. They would have -- they would have known</p> <p>24 that, correct?</p> <p>25 MR. SCHEFF: Object to the form.</p>	<p style="text-align: right;">Page 247</p> <p>1 99 percent of the -- the bad debt out of GPLS, what</p> <p>2 happened to the other 1 percent of bad debt?</p> <p>3 A. So that would have stayed with the tribe if</p> <p>4 it wasn't being bought back. I think that that's</p> <p>5 what you're seeing on the income statement on that</p> <p>6 second line for loan losses.</p> <p>7 Q. So --</p> <p>8 A. Revenue and loan loss, the 1 percent.</p> <p>9 Q. Okay. And -- and you're aware that all of</p> <p>10 the -- the bad debt was sold to a company called</p> <p>11 National Credit Adjusters, right?</p> <p>12 MR. SHELDON: Object to form.</p> <p>13 A. I've heard that name before. I don't know</p> <p>14 that it was all sold to them, because I wasn't</p> <p>15 involved in those contracts.</p> <p>16 BY MR. ACKELSBURG:</p> <p>17 Q. And is it your understanding that what</p> <p>18 National Credit Adjusters purchased, or whoever that</p> <p>19 debt buyer was, that they were only purchasing</p> <p>20 99 percent of -- of the bad -- of the value of the</p> <p>21 bad debt?</p> <p>22 MR. DAUGHERTY: Object to form.</p> <p>23 A. So my understanding of it is that the loan</p> <p>24 can't be bifurcated, and then 99 percent and</p> <p>25 1 percent. So loans are sold. The money --</p>
<p style="text-align: right;">Page 246</p> <p>1 MR. SHELDON: Object to form.</p> <p>2 A. I would -- yes.</p> <p>3 BY MR. ACKELSBURG:</p> <p>4 Q. And they would have known that they -- they</p> <p>5 have no risk for bad loans because Think Finance</p> <p>6 was -- was buying out the bad loans, the more than</p> <p>7 60 day delinquents, pursuant to their guarantee to</p> <p>8 GPLS?</p> <p>9 MR. SCHEFF: Object to the form.</p> <p>10 BY MR. ACKELSBURG:</p> <p>11 Q. The tribe would have known that, right?</p> <p>12 MR. SCHEFF: Object to the form.</p> <p>13 A. I don't know if the tribe knew that,</p> <p>14 because, again, I think that was the relationship</p> <p>15 between Think Finance and GPLS. That was their</p> <p>16 agreement, as we -- I know I said earlier, I</p> <p>17 didn't -- I wasn't sure. But based on these e-mails</p> <p>18 and the support you've provided me, the tribe was</p> <p>19 not having their bad debts bought back. So they --</p> <p>20 we were not buying -- Think Finance was not buying</p> <p>21 bad loans from GPL -- from Plain Green. They were</p> <p>22 only buying 99 percent of the bad participations</p> <p>23 that GPLS had purchased.</p> <p>24 BY MR. ACKELSBURG:</p> <p>25 Q. And when Think Finance bought the</p>	<p style="text-align: right;">Page 248</p> <p>1 BY MR. ACKELSBURG:</p> <p>2 Q. Sold by who?</p> <p>3 A. The loans are sold by the tribe. They sign</p> <p>4 off on the agreement and say, "We want to sell these</p> <p>5 loans." They agree to the list of loans that are</p> <p>6 being sold. They have the contract. It's sold.</p> <p>7 They receive the funds from the -- from the -- I</p> <p>8 guess National Credit Service, whoever. They</p> <p>9 receive the funds. And then the -- we do the</p> <p>10 accounting for the funds and provide the 99 percent</p> <p>11 back through the chain of the entities to GPLS.</p> <p>12 Q. All right. I'm going to --</p> <p>13 A. And the tribe gets to keep their 1 percent</p> <p>14 of the debt sales.</p> <p>15 Q. All right. Well, why don't I -- why don't</p> <p>16 I show you a document that I was going to show you</p> <p>17 before. I think I'll show you now. Let me show you</p> <p>18 another document first, and I'm going to go back to</p> <p>19 the debt sales. But this -- this one, I'm going to</p> <p>20 mark as Plaintiff's Exhibit 177.</p> <p>21 (Exhibit No. 177 marked.)</p> <p>22 A. (Reviews document.)</p> <p>23 BY MR. ACKELSBURG:</p> <p>24 Q. So you're looking at Plaintiff's</p> <p>25 Exhibit 177?</p>

Page 1

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA
- - -
COMMONWEALTH OF :
PENNSYLVANIA :
Plaintiff :
:
VS. : CIVIL ACTION NUMBER
: 2:14-CV-07139
THINK FINANCE, INC., :
ET AL., :
Defendants :
- - -
FEBRUARY 13, 2018
- - -

Videotaped deposition of MARK
WILDSTEIN, was taken pursuant to notice at The
Pyramid Club, 1735 Market Street,
Philadelphia, Pennsylvania, beginning at or
about 9:25 a.m. before Jeannine Cancelliere,
Court Reporter and Notary Public and John
Vaders, Videotape Operator, there being
present.

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Page 6	Page 8
<p>1 VIDEOTAPE OPERATOR: We're now</p> <p>2 on the record. My name is Jonathan Vaders.</p> <p>3 I'm the videographer retained by On the</p> <p>4 Record. This is a video deposition for the</p> <p>5 Pennsylvania Eastern District Court. Today's</p> <p>6 date is February 13th, 2018. The video time</p> <p>7 is 9:29 a m.</p> <p>8 This deposition is being held at</p> <p>9 1735 Market Street in the matter of</p> <p>10 Commonwealth of Pennsylvania versus Think</p> <p>11 Finance. The deponent is Mark Wildstein. All</p> <p>12 counsel will be noted on the stenographic</p> <p>13 record. The court reporter is Jeannine</p> <p>14 Cancelliere and will now swear in the witness.</p> <p>15 - - -</p> <p>16 MARK WILDSTEIN, after having</p> <p>17 been first duly sworn, was examined and</p> <p>18 testified as follows:</p> <p>19 - - -</p> <p>20 EXAMINATION</p> <p>21 - - -</p> <p>22 BY MR. ACKELSBERG:</p> <p>23 Q. Good morning, is it Wildstein or</p> <p>24 Wildstein?</p>	<p>1 lawsuit?</p> <p>2 A. Inform myself?</p> <p>3 Q. Well, what did you do after you got the</p> <p>4 subpoena?</p> <p>5 A. I called my brother who is involved with</p> <p>6 -- was involved with First Bank of Delaware.</p> <p>7 Q. What's his name?</p> <p>8 A. Harris Wildstein, Stein.</p> <p>9 Q. And then what?</p> <p>10 A. He suggested that I call Harry Madonna.</p> <p>11 Q. Who is Harry Madonna?</p> <p>12 A. Harry was the chairman of First Bank of</p> <p>13 Delaware.</p> <p>14 Q. Did you do that?</p> <p>15 A. I did. Harry asked me to send him the</p> <p>16 subpoena. He took a look at it and then</p> <p>17 suggested that I call Richard Scheff.</p> <p>18 Q. The subpoena also directed you to</p> <p>19 produce some documents; isn't that correct?</p> <p>20 A. Yes.</p> <p>21 Q. And you went over that list of</p> <p>22 documents?</p> <p>23 A. Yes.</p> <p>24 Q. What did you -- and you gave some</p>

<p style="text-align: right;">Page 9</p> <p>1 documents to your attorney to get to us, 2 correct? 3 A. The only documentation I had -- I had no 4 physical documents of any kind. I went 5 through my old e-mails and was surprised to 6 find a bunch of e-mails related to Universal 7 Finance. 8 Q. And everything you could find, you gave 9 to Mr. Scheff for production to us? 10 A. Yes. 11 Q. Thank you. Before we get into the 12 substance of the deposition, I want to just 13 ask you a few standard preliminary questions. 14 First of all, have you ever been deposed 15 before? 16 A. No, I have not. 17 Q. Let me just, I assume your lawyer 18 explained to you some of this, but I need to 19 kind of go through it just to confirm on the 20 record that you understand what we're doing 21 here today. 22 I'm going to be asking you 23 questions requesting an answer. Everything 24 that's said, my question, your answer, will be</p>	<p style="text-align: right;">Page 11</p> <p>1 answer if, in fact, that's truthful. The 2 point here is just to be truthful. 3 A. Okay, I understand. 4 Q. If you don't understand the question, 5 you can ask me to clarify? 6 A. I understand. 7 Q. Your lawyer may object to a question, 8 the other lawyers may say something too. But 9 even if there is an objection, after the 10 objection is over, unless your lawyer directs 11 you not to answer it, you still have to answer 12 the question. Okay? 13 A. I understand, yes. 14 Q. We will take breaks, and if you need 15 one, just ask. But you'll need to answer any 16 pending question before we take the break. 17 Okay? 18 A. Yes. 19 Q. Lastly, is there any reason, for 20 example, illness, hearing disorder, 21 medication, lack of sleep, anything like that 22 which would interfere with your ability to 23 give truthful testimony here today? 24 A. No, there is not.</p>
<p style="text-align: right;">Page 10</p> <p>1 transcribed by the court reporter, who after 2 all of this is over will prepare a written 3 transcript of what was said by you, by me, by 4 the other lawyers in the room. Everything 5 that's said is put on this transcript. Do you 6 understand that? 7 A. Yes, I do. 8 Q. And that transcript could conceivably be 9 used by a party in this case, do you 10 understand that? 11 A. Yes. 12 Q. And you're under oath as if we were 13 sitting in a court of law, do you understand 14 that too? 15 A. Yes. 16 Q. Now because the transcript, as opposed 17 to the video, is the official record of your 18 testimony, you have to answer the questions 19 verbally. Nods or shrugs won't work, even 20 though they'll come up on the video. You need 21 to answer with words. Okay? 22 A. Yes. 23 Q. If you don't know the answer, then 24 that's fine. I don't know is a perfectly fine</p>	<p style="text-align: right;">Page 12</p> <p>1 Q. Let me just do like just a little bit of 2 background. How old are you? 3 A. 67. 4 Q. We're the identical age. Are you 5 employed? 6 A. Self employed. 7 Q. In what field? 8 A. Real estate. 9 Q. Has that always been your employment? 10 A. You don't want my whole history, do you? 11 Q. No, not really, the last 10, 20 years. 12 A. It has always been real estate. 13 Q. Where did you grow up? 14 A. Cheltenham Township. 15 Q. Did you go to Cheltenham High? 16 A. I did. Were you in my class? 17 Q. I was not. A lot of famous people went 18 to Cheltenham High. 19 A. Yeah. 20 Q. Did you go to college? 21 A. Yes, I did. 22 Q. Where? 23 A. Penn State. 24 Q. Do you have any graduate degrees?</p>

<p style="text-align: right;">Page 13</p> <p>1 A. No, I do not.</p> <p>2 Q. When you say you're in real estate, is</p> <p>3 that both -- is that residential, commercial,</p> <p>4 both?</p> <p>5 A. Brokerage and then investment in</p> <p>6 residential and commercial/industrial.</p> <p>7 Q. You were served at 1429 Spring Mill Road</p> <p>8 in Gladwyne, correct?</p> <p>9 A. That's correct.</p> <p>10 Q. Is that your residence?</p> <p>11 A. Yes, it is.</p> <p>12 Q. Do you own that house?</p> <p>13 A. Yes, I do.</p> <p>14 Q. Who lives there with you?</p> <p>15 A. Just me.</p> <p>16 Q. We're going to be using -- I referenced</p> <p>17 in the beginning the defendant company being</p> <p>18 named Think Finance. I believe when you were</p> <p>19 involved, they were called Think Cash, right?</p> <p>20 A. I believe so, yes.</p> <p>21 Q. Just so that you know, when I say Think</p> <p>22 Finance, it's the company that you knew as</p> <p>23 Think Cash.</p> <p>24 A. I understand.</p>	<p style="text-align: right;">Page 15</p> <p>1 the fund that you were the sole member of</p> <p>2 would buy participation interests in the loans</p> <p>3 made by that business.</p> <p>4 A. That's correct.</p> <p>5 MR. SCHEFF: Object to the</p> <p>6 form. You can answer the question.</p> <p>7 BY MR. ACKELSBURG:</p> <p>8 Q. How did a real estate agent get involved</p> <p>9 in the online loan business?</p> <p>10 A. My brother is on the board of the bank.</p> <p>11 Q. And that's s Harris?</p> <p>12 A. That's Harris. I had a relationship</p> <p>13 with the bank.</p> <p>14 Q. In what way?</p> <p>15 A. Lending and advisory, certain advisory</p> <p>16 things. And they asked me if I would like to</p> <p>17 participate in this as a trusted person who</p> <p>18 they knew, and that's how it came about.</p> <p>19 Q. When you say -- first of all you</p> <p>20 mentioned that you had relationship with</p> <p>21 lending, were you lending money to the bank or</p> <p>22 was the bank lending money to you?</p> <p>23 A. No, I was borrowing money from the bank.</p> <p>24 MR. SCHEFF: You have to wait</p>
<p style="text-align: right;">Page 14</p> <p>1 Q. You're aware, are you not, that Think</p> <p>2 Finance and First Bank of Delaware were at one</p> <p>3 time jointly involved in an online loan</p> <p>4 business?</p> <p>5 MR. SCHEFF: Objection to the</p> <p>6 form. You can answer the question.</p> <p>7 THE WITNESS: Yes.</p> <p>8 BY MR. ACKELSBURG:</p> <p>9 Q. And you owned an investment fund called</p> <p>10 Universal Finance II; is that correct?</p> <p>11 A. I didn't own it, I was the sole member.</p> <p>12 Q. Sole member, okay. And that investment</p> <p>13 fund that you were the sole member of, during</p> <p>14 the period 2009 to 2010, purchased,</p> <p>15 participation interests in loans made by that</p> <p>16 business between Think Finance and First Bank</p> <p>17 of Delaware, correct?</p> <p>18 MR. SCHEFF: Object to the</p> <p>19 form. You can answer the question.</p> <p>20 THE WITNESS: The dates, I</p> <p>21 think by 2010 we were no longer involved, but</p> <p>22 yes.</p> <p>23 BY MR. ACKELSBURG:</p> <p>24 Q. In 2009 and 2010 or a portion of 2010,</p>	<p style="text-align: right;">Page 16</p> <p>1 until he finishes his question and then</p> <p>2 provide the answer.</p> <p>3 BY MR. ACKELSBURG:</p> <p>4 Q. And you said there was some consulting,</p> <p>5 as well?</p> <p>6 A. I offered and occasionally helped with</p> <p>7 real estate questions.</p> <p>8 Q. Now when you say they asked you to get</p> <p>9 involved in this, who is they? Was it Harris?</p> <p>10 A. I believe it was Harris, yes.</p> <p>11 Q. Do you remember what he said?</p> <p>12 A. No, not exactly.</p> <p>13 Q. Are we talking about 2008, 2009 or are</p> <p>14 we talking earlier?</p> <p>15 A. I'm not sure exactly, but 2007, I</p> <p>16 believe.</p> <p>17 Q. Now there was -- this investment fund</p> <p>18 that you were the sole member of, Universal</p> <p>19 Finance II, there was an earlier Universal</p> <p>20 fund, correct?</p> <p>21 A. Yes, there was.</p> <p>22 Q. And that also had to do with First Bank</p> <p>23 of Delaware?</p> <p>24 A. It was the same type of fund, yes.</p>

<p style="text-align: right;">Page 17</p> <p>1 Q. When you talked about Harris coming to 2 you with a proposal to get involved in this, 3 we're talking about Universal I as opposed to 4 Universal II? 5 A. I believe it was both, yes. Yes. 6 Q. Let's -- start with an exhibit. Just 7 for the record, what we're going to do with 8 the exhibits, rather than call them Wildstein 9 Exhibits, we're going to start numbering them 10 as P-1, P-2, P-3 to try to minimize the 11 confusion of all of the paper that's going to 12 be rolling around in the case. 13 What we're going to do is 14 identify this first exhibit as P-1. 15 - - - 16 (Whereupon Exhibit P-1 was 17 marked for identification.) 18 - - - 19 BY MR. ACKELSBURG: 20 Q. And one for your attorney. So I brought 21 four copies. 22 MR. GATEWOOD: Mr. 23 Ackelsberg, even though this exhibit is not 24 marked confidential, as a suggestion on</p>	<p style="text-align: right;">Page 19</p> <p>1 Q. Remember we talked about the documents 2 that you found -- 3 MR. SCHEFF: He doesn't 4 understand what you mean by produced. 5 BY MR. ACKELSBURG: 6 Q. This is one of the documents that you 7 found on your e-mail that you gave to your 8 lawyer. 9 A. Yes. 10 Q. What is it? 11 A. To the best of my knowledge, this is a 12 -- this is the offering memorandum, without 13 going through everything. Quite frankly, I 14 relied on the attorneys to produce the 15 document. 16 Q. I understand. 17 A. I'm not an attorney and I don't 18 understand all of this. 19 Q. Okay. But you're familiar with some 20 parts of it though, right? 21 A. Yes. 22 Q. Particularly the parts that describe the 23 nature of the business that people were 24 investing in?</p>
<p style="text-align: right;">Page 18</p> <p>1 housekeeping, I suggest that any exhibit that 2 you use with the deponent that is marked 3 confidential, that was produced as 4 confidential, we just note that at the time 5 that you mark the exhibit. 6 MR. ACKELSBURG: Sure. 7 MR. GATEWOOD: So we don't 8 have to go back -- 9 MR. ACKELSBURG: That's a 10 good idea. 11 BY MR. ACKELSBURG: 12 Q. What I did, just so you all know, there 13 are some documents that he had and that aren't 14 confidential and aren't marked confidential. 15 So where I can, I'm using those. But there 16 will be a few that do have that marking and I 17 will note that on the record. 18 You have what has been marked 19 as P-1. 20 A. Yes, I do. 21 Q. What is this document, you produced 22 this. So what is this? 23 A. I didn't produce it, the lawyers 24 produced it.</p>	<p style="text-align: right;">Page 20</p> <p>1 A. Yes. 2 Q. Let's look at a couple of the 3 statements, and we're going to refer to this 4 as the private placement memorandum or the 5 PPM. 6 A. Right. 7 Q. Okay. If you go to page five and if you 8 look in the right-hand corner, it will say 9 Wildstein-29. Do you see that? 10 A. Yes. 11 Q. In the first paragraph, it says that 12 your company, Universal Finance II was 13 organized on May 8th, 2008. Do you see that? 14 A. Yes. 15 Q. Do you remember that, the forming of the 16 company on or about May of 2008? 17 A. Yes, because I'm assuming that I signed 18 this document, yes. 19 Q. And then on page 17 of the memorandum, 20 which is Wildstein-41, it also mentions the 21 formation on May 8th, 2008 at the top. 22 A. Yes. 23 Q. I believe it also mentions in there 24 under -- if you look to the next page, it</p>

<p style="text-align: right;">Page 69</p> <p>1 BY MR. ACKELSBURG:</p> <p>2 Q. Do you remember there were certain fees</p> <p>3 that Think Finance charged for marketing and</p> <p>4 technology? Do you remember that?</p> <p>5 A. I don't recall specifically.</p> <p>6 Q. You don't recall specifically the amount</p> <p>7 or that there were --</p> <p>8 A. I see that there are these fees.</p> <p>9 Q. Does that refresh your recollection?</p> <p>10 A. Again, it's ten years ago, you know.</p> <p>11 Q. The next bullet, it looks like -- it</p> <p>12 says in any month where the principal</p> <p>13 charge-offs on the loans exceed 25 percent of</p> <p>14 the stated principal amount of the loans</p> <p>15 outstanding, the amount of principal on the</p> <p>16 loans that exceeds 25 percent which continues</p> <p>17 to be owned by the bank as part of its</p> <p>18 retained interest shall be retained as a bank</p> <p>19 fee. Do you see that?</p> <p>20 A. Yes.</p> <p>21 Q. This means that if the loan losses were</p> <p>22 higher than a certain amount, the bank might</p> <p>23 have a charge for an additional fee on that</p> <p>24 loan loss, on their share, do you see that?</p>	<p style="text-align: right;">Page 71</p> <p>1 that the bank actually got paid a percentage</p> <p>2 out of the collections for the amount that</p> <p>3 Universal Fund got?</p> <p>4 A. Only the fact that I see it here. I</p> <p>5 don't recall.</p> <p>6 Q. You don't remember?</p> <p>7 A. No.</p> <p>8 Q. You don't remember anyone explaining</p> <p>9 that to you?</p> <p>10 A. No, I don't.</p> <p>11 Q. Now, in addition to the participation</p> <p>12 agreement that you signed with the bank, you</p> <p>13 signed an administrative agency agreement with</p> <p>14 Think Finance, correct?</p> <p>15 A. I believe so, yes.</p> <p>16 Q. And I believe that's also an attachment</p> <p>17 to the PPM. If you go to Wildstein-109, do</p> <p>18 you see amended and restated administrative</p> <p>19 agency agreement?</p> <p>20 A. Yes, I do.</p> <p>21 Q. If refers to Universal Finance. It uses</p> <p>22 the term SPE. Do you see that?</p> <p>23 A. Yes.</p> <p>24 Q. Do you know what SPE stands for?</p>
<p style="text-align: right;">Page 70</p> <p>1 MR. SCHEFF: Object to the</p> <p>2 form.</p> <p>3 THE WITNESS: I see that.</p> <p>4 BY MR. ACKELSBURG:</p> <p>5 Q. The last bullet is that the bank also</p> <p>6 gets monthly compensation determined, it says</p> <p>7 in writing from time to time between the bank</p> <p>8 and Universal, which will not exceed 15</p> <p>9 percent times the interest and fees for the</p> <p>10 prior month. Do you see this?</p> <p>11 A. Yes, I do.</p> <p>12 Q. Do you remember the term revenue share?</p> <p>13 A. Do I remember the term?</p> <p>14 Q. Yes.</p> <p>15 A. No.</p> <p>16 Q. Do you see that the bank got a fee off</p> <p>17 of the collections on the 90 percent that the</p> <p>18 Universal owned?</p> <p>19 MR. SCHEFF: Object to the</p> <p>20 form.</p> <p>21 BY MR. ACKELSBURG:</p> <p>22 Q. Do you see that?</p> <p>23 A. I see, I see that.</p> <p>24 Q. Does that refresh your recollection,</p>	<p style="text-align: right;">Page 72</p> <p>1 A. No.</p> <p>2 Q. If you turn to the signature page,</p> <p>3 Wildstein-131, who are the signators?</p> <p>4 A. Ken Rees and Mark Wildstein.</p> <p>5 Q. So Ken Rees signed as president of TC</p> <p>6 Administrative Services and you signed as the</p> <p>7 managing member of Universal, correct?</p> <p>8 MR. SCHEFF: Object to the</p> <p>9 form. It misstates the document. You can</p> <p>10 answer the question.</p> <p>11 THE WITNESS: Correct, yes.</p> <p>12 BY MR. ACKELSBURG:</p> <p>13 Q. Actually I'm looking at the wrong one.</p> <p>14 You're very correct. I'm sorry, the signature</p> <p>15 page of the administrative agency agreement is</p> <p>16 Wildstein-124.</p> <p>17 A. Okay.</p> <p>18 Q. It's the same people that signed that</p> <p>19 agreement though, right?</p> <p>20 A. Yes.</p> <p>21 Q. The agreement that we looked at, the</p> <p>22 signature line that we looked at first was</p> <p>23 actually the signature page, it's something</p> <p>24 called a guarantee agreement between Universal</p>

<p style="text-align: right;">Page 73</p> <p>1 and Think Cash Incorporated, correct?</p> <p>2 A. I see that, yes.</p> <p>3 Q. Because Think Cash or now known as Think</p> <p>4 Finance was guaranteeing all of the</p> <p>5 obligations and all of the promises made to</p> <p>6 Universal by TC Administrative Services,</p> <p>7 right?</p> <p>8 MR. GATEWOOD: Objection to</p> <p>9 form.</p> <p>10 THE WITNESS: I see that,</p> <p>11 yes.</p> <p>12 BY MR. ACKELSBERG:</p> <p>13 Q. Do you remember that?</p> <p>14 A. To the best of my knowledge.</p> <p>15 Q. In the administrative agency agreement,</p> <p>16 if you look at page 98 and 99, it's a listing</p> <p>17 of the lawyers that represented the various</p> <p>18 parties to get notices, do you see that?</p> <p>19 A. Yeah, at the bottom.</p> <p>20 Q. Well, it's in the bottom --</p> <p>21 A. Wildstein-98 or page 98?</p> <p>22 Q. Wildstein-123.</p> <p>23 A. Oh, 123.</p> <p>24 Q. And 124?</p>	<p style="text-align: right;">Page 75</p> <p>1 Q. Yeah, but I mean you remember him?</p> <p>2 A. If I run into him today, would I</p> <p>3 recognize him, probably not.</p> <p>4 Q. What about Rick Eckman, is that a name</p> <p>5 that --</p> <p>6 A. I recall the name.</p> <p>7 Q. But you don't recall ever meeting him?</p> <p>8 A. I may have.</p> <p>9 Q. Now you'll see that there are various</p> <p>10 lawyers -- there's a law firm mentioned for</p> <p>11 Think Finance and for TC Administrative</p> <p>12 Services?</p> <p>13 A. Uh-huh.</p> <p>14 Q. It's the Coblenz Law Firm in San</p> <p>15 Francisco, an attorney by the name of Paul</p> <p>16 Tauber?</p> <p>17 A. Yep.</p> <p>18 Q. Is that a name you remember?</p> <p>19 A. No.</p> <p>20 Q. Okay. In administrative agency</p> <p>21 agreement Wildstein-111, 111 and 112, am I</p> <p>22 correct that this entity of Think Finance,</p> <p>23 known as TC Administrative Services, the</p> <p>24 administrative agent would manage all of the</p>
<p style="text-align: right;">Page 74</p> <p>1 A. Yeah, 122 and 123.</p> <p>2 Q. Do you see this page lists the various</p> <p>3 parties to the agreement, the two parties; and</p> <p>4 then it lists the lawyers who get copies on</p> <p>5 behalf of those who get notices pursuant to</p> <p>6 the agreement?</p> <p>7 A. Yes.</p> <p>8 Q. It actually lists two law firms here for</p> <p>9 you, right? It lists Pepper Hamilton and a</p> <p>10 Richard Eckman?</p> <p>11 A. Yes.</p> <p>12 Q. And it lists Spector Gadon, Mr.</p> <p>13 Fitzgerald, you mentioned before?</p> <p>14 A. Yes.</p> <p>15 Q. Were they both your lawyers, do you</p> <p>16 remember?</p> <p>17 A. I don't recall. I remember both of the</p> <p>18 names, but I don't recall.</p> <p>19 Q. Do you remember either of these</p> <p>20 individuals, Edward Fitzgerald or Richard</p> <p>21 Eckman?</p> <p>22 A. I do remember Ed.</p> <p>23 Q. You know him by Ed, right?</p> <p>24 A. That's his name.</p>	<p style="text-align: right;">Page 76</p> <p>1 bank accounts -- all of the Universal bank</p> <p>2 accounts at First Bank of Delaware?</p> <p>3 MR. GATEWOOD: Objection to</p> <p>4 form.</p> <p>5 MR. SCHEFF: Object to the</p> <p>6 form.</p> <p>7 BY MR. ACKELSBERG:</p> <p>8 Q. That was part of what they were agreeing</p> <p>9 to do here, right?</p> <p>10 MR. GATEWOOD: Objection.</p> <p>11 MR. SCHEFF: Object to the</p> <p>12 form.</p> <p>13 THE WITNESS: If that's what</p> <p>14 it says, yes.</p> <p>15 BY MR. ACKELSBERG:</p> <p>16 Q. And it was also their job to fund that</p> <p>17 reserve account that we talked about before.</p> <p>18 MR. GATEWOOD: Objection.</p> <p>19 MR. SCHEFF: Object to the</p> <p>20 form.</p> <p>21 THE WITNESS: To the best of</p> <p>22 my knowledge, yes.</p> <p>23 BY MR. ACKELSBERG:</p> <p>24 Q. And to pay the attorneys to draft the</p>

<p style="text-align: right;">Page 77</p> <p>1 investment documents like you described 2 before? 3 MR. GATEWOOD: Objection, 4 form. 5 THE WITNESS: To the best of 6 my knowledge. 7 BY MR. ACKELSBURG: 8 Q. And to maintain all of the books and 9 records? 10 MR. GATEWOOD: Object to the 11 form. 12 THE WITNESS: Yes. 13 BY MR. ACKELSBURG: 14 Q. And every month pay all of bank fees due 15 to First Bank of Delaware, to make the 16 principal interest payments due to the 17 investors, fund reserve account, all of these 18 things was what TC Administrative Services, 19 the Think Finance agent, those were part of 20 the obligations that they were to perform for 21 Universal fund, right? 22 MR. GATEWOOD: Objection to 23 form. 24 THE WITNESS: To the best of</p>	<p style="text-align: right;">Page 79</p> <p>1 paragraph. 2 A. To the extent funds in the operating -- 3 Q. Yes. This is where the guarantee comes 4 from; is it not, where Think will actually 5 guarantee the principal and interest payable 6 to the investors. Do you see that? 7 MR. GATEWOOD: Objection, 8 form. 9 MR. SCHEFF: Objection to the 10 form. 11 THE WITNESS: I see that, 12 yes. 13 BY MR. ACKELSBURG: 14 Q. That's what we talked about before, 15 right? 16 A. Yes. 17 Q. And the last paragraph, this is 18 something we haven't mentioned before. As I 19 read this, it looks like all of the money left 20 after paying all of the fees, after paying the 21 investors, after paying the administrative 22 fee, if there's anything left from the loan 23 collections, from the revenues, that Think 24 keeps that as an administrative fee for their</p>
<p style="text-align: right;">Page 78</p> <p>1 my knowledge. 2 BY MR. ACKELSBURG: 3 Q. And if you look at -- flip the page, you 4 will see here in terms of deposits and 5 withdrawals -- 6 A. 113? 7 Q. 112. 8 A. Wildstein-113? 9 Q. 112. So you see that in terms of 10 deposits and withdrawals, they arrange for the 11 funds received from the investors to be 12 deposited. Do you see that? 13 A. Uh-huh. 14 Q. Into the operating account, do you see 15 that? 16 A. Yes. 17 Q. And they're also -- it's also their job 18 to pay the bank the fees that the bank was 19 entitled to, that we described before? 20 MR. GATEWOOD: Objection. 21 THE WITNESS: Right, for the 22 prior month, I see. Yes. 23 BY MR. ACKELSBURG: 24 Q. Okay. Look at the next to the last</p>	<p style="text-align: right;">Page 80</p> <p>1 services. 2 MR. GATEWOOD: Objection, 3 form. 4 BY MR. ACKELSBURG: 5 Q. Do you remember that? 6 A. I see that. 7 Q. Do you remember it? 8 A. I do not recall. 9 Q. You don't remember that the residual 10 cash after payment of everything was owed went 11 to Think Finance? 12 MR. SCHEFF: Object to the 13 form. 14 THE WITNESS: Again, to the 15 best of my knowledge, it would make sense, 16 after everything else is paid. 17 BY MR. ACKELSBURG: 18 Q. Do you remember in any of your 19 agreements with Think or this Think entity, 20 TCAS, was there any requirement that you get 21 daily reports or weekly reports or monthly 22 reports, do you remember anything about that? 23 MR. SCHEFF: Object to the 24 form.</p>

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

COMMONWEALTH OF PENNSYLVANIA *
BY ATTORNEY GENERAL JOSH *
SHAPIRO, *
Plaintiff, *

VS. * Civil Action
* No. 14-7139-JCJ
THINK FINANCE, INC., et al., *
Defendants. *

ORAL AND VIDEOTAPED DEPOSITION OF
MICHELLE NYUGEN
APRIL 19, 2018

DEPOSITION of MICHELLE NYUGEN,
produced as a witness at the instance of the
Plaintiff, and duly sworn, was taken in the
above-styled and numbered cause on the 19th day of
April, 2018, from 9:04 a.m. to 5:20 p.m., before
Christy R. Sievert, CSR, RPR, in and for the State
of Texas, reported by machine shorthand, at the
offices of Hunton & Williams, LLP, 1445 Ross Avenue,
Suite 3700, Dallas, Texas 75202, pursuant to the
Federal Rules of Civil Procedure and the provisions
stated on the record or attached hereto.

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1 PROCEEDINGS

2 THE VIDEOGRAPHER: We are now on the

3 record for the videotaped deposition of Michelle

4 Nguyen. The time is 9:04 a.m., April 19, 2018. In

5 the matter of the Commonwealth of Pennsylvania, et

6 al, vs. Think Finance, Incorporated, et al., Civil

7 Action No. 14-7139-JCJ, being held in the United

8 States Court for the Eastern District of

9 Pennsylvania.

10 The court reporter is Christy Sievert, and

11 the videographer is Gus Phillips. Both are

12 representatives of Kaplan, Leaman & Wolfe Court

13 Reporters.

14 Will counsel please state their

15 appearances for the record.

16 MR. GROGAN: John Grogan for the

17 Commonwealth of Pennsylvania.

18 MR. ACKELSBURG: Irv Ackelsberg, same.

19 MR. MIRARCHI: Saverio Mirarchi for

20 the Commonwealth of Pennsylvania.

21 MR. DAUGHERTY: Patrick Daugherty on

22 behalf of National Credit Adjusters.

23 MR. HAWS: Matthew Haws on behalf of

24 the Victory Park defendants.

25 MR. SHAPIRO: Dan Shapiro for the

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1 Victory Park defendants. And Scott Zeminck is on

2 the phone with us, general counsel of Victory Park.

3 MR. GATEWOOD: Matthew Gatewood for

4 the Think Finance defendants.

5 MR. HERMAN: David Herman on behalf of

6 Kenneth E. Rees.

7 MR. SCHEFF: Richard Scheff for

8 Michelle Nguyen.

9 MR. GROGAN: Could we also identify a

10 second person on the phone, please? Is there --

11 MR. HERMAN: No, that's the --

12 MR. SCHEFF: He already did.

13 MR. ACKELSBURG: That was just this

14 phone. All right.

15 MR. GROGAN: Swear in the witness,

16 please.

17 MICHELLE NYUGEN

18 having been first duly sworn,

19 testified as follows:

20 EXAMINATION

21 BY MR. GROGAN:

22 Q. Good morning, Ms. Nguyen.

23 A. Good morning.

24 Q. Am I pronouncing your last name correctly?

25 A. Yes.

<p style="text-align: right;">Page 9</p> <p>1 Q. Great. Thank you.</p> <p>2 Thanks for being here. I'm sure you</p> <p>3 would -- you'd rather be somewhere else.</p> <p>4 A. Yes.</p> <p>5 Q. But we do appreciate your time, and we'll</p> <p>6 try to use it productively.</p> <p>7 It would help me to know if you've been</p> <p>8 deposed before.</p> <p>9 A. No, I have not.</p> <p>10 Q. Never. Okay. So let me go over some</p> <p>11 ground rules that will help explain what's going on</p> <p>12 here. I'll be asking you questions throughout the</p> <p>13 day. Occasionally, I'll be showing you documents,</p> <p>14 but it's mostly a question-and-answer session.</p> <p>15 It's all being taken down by -- by</p> <p>16 Christy, the court reporter, and she's creating the</p> <p>17 official transcript. What is written is the</p> <p>18 official transcript.</p> <p>19 We also have it videotaped. So your</p> <p>20 answers are being videotaped. Because of that, it's</p> <p>21 really important that you respond out loud to my</p> <p>22 questions. You and I may be able to understand</p> <p>23 shrugs of the shoulders or -- or rolls of the eyes</p> <p>24 or --</p> <p>25 A. Right.</p>	<p style="text-align: right;">Page 11</p> <p>1 least I hope not. I will try to move efficiently.</p> <p>2 If you need a break at any time for any reason,</p> <p>3 that's fine, just let us know. We'll be taking</p> <p>4 one -- we'll be taking breaks on our own initiative,</p> <p>5 but if you need one, I'm happy to take it. The only</p> <p>6 thing I'd ask you to do, though, is answer any</p> <p>7 pending questions before you take your break.</p> <p>8 You're also free to consult with your counsel, but I</p> <p>9 would ask you to answer the question before you do</p> <p>10 that.</p> <p>11 From my perspective, although perhaps not</p> <p>12 Mr. Scheff's, this works best if this is a</p> <p>13 conversation. And for that reason, I am -- I am</p> <p>14 interested in your truthful answers to the questions</p> <p>15 that I've asked. And it's my obligation to ask you</p> <p>16 the questions, and for you to let me know if you</p> <p>17 don't understand the questions. It often will occur</p> <p>18 that there's something about my question that you're</p> <p>19 not understanding. It may be because I don't</p> <p>20 understand what I'm asking, or I don't understand</p> <p>21 fully what I'm asking. If you care to volunteer to</p> <p>22 help me keep my question on track or to fill in the</p> <p>23 blanks, I would appreciate it. It helps things go</p> <p>24 more smoothly.</p> <p>25 Is there any reason today that you -- you</p>
<p style="text-align: right;">Page 10</p> <p>1 Q. -- head movements, but the court reporter</p> <p>2 needs to hear your response.</p> <p>3 Because we're trying to create a record,</p> <p>4 the easiest thing to do is for us to try to</p> <p>5 discipline ourselves; that I will try and state my</p> <p>6 question fully and completely, and if you'll let me</p> <p>7 get that out before you respond, that will be very</p> <p>8 helpful. In turn -- and this will be harder -- I</p> <p>9 will try and let you finish your answer before I ask</p> <p>10 the next question.</p> <p>11 One wrinkle is that your counsel or one of</p> <p>12 the other counsel right here may object to my</p> <p>13 question. In very limited circumstances where</p> <p>14 you're instructed directly not to answer the</p> <p>15 question, you are obligated to answer my question</p> <p>16 despite the objections. So it usually works well if</p> <p>17 I ask the question, and you give your counsel time</p> <p>18 to object or one of the other lawyers time to object</p> <p>19 before responding. If we try to keep -- avoid</p> <p>20 talking over one another, that will help make the</p> <p>21 record clear. Is that -- is that acceptable?</p> <p>22 A. Understood.</p> <p>23 Q. Good. Good.</p> <p>24 It's not a -- we will be here quite a</p> <p>25 while. I don't think we'll be here all day. At</p>	<p style="text-align: right;">Page 12</p> <p>1 can't give your full attention and truthful answers?</p> <p>2 Are you feeling ill, lack of sleep, or any kind of</p> <p>3 medication that would impede you from giving your</p> <p>4 best efforts this morning?</p> <p>5 A. No.</p> <p>6 Q. Okay. Great. Thank you.</p> <p>7 Can I ask you who you spoke with in</p> <p>8 preparation for today's deposition?</p> <p>9 A. My counsel.</p> <p>10 Q. Okay. Have you spoken with anybody other</p> <p>11 than your counsel?</p> <p>12 A. No.</p> <p>13 Q. Did you review any documents prior to</p> <p>14 today's deposition?</p> <p>15 A. With my counsel.</p> <p>16 Q. Okay. And what were those documents?</p> <p>17 A. I -- I can't recall all the specific</p> <p>18 documents.</p> <p>19 Q. Did you -- do you recall reading any</p> <p>20 deposition transcripts?</p> <p>21 A. No.</p> <p>22 Q. Did you read Mr. Harvison's transcript --</p> <p>23 A. No.</p> <p>24 Q. -- that was taken two days ago?</p> <p>25 Okay. Did counsel provide you those</p>

<p style="text-align: right;">Page 13</p> <p>1 documents?</p> <p>2 A. I'm sorry, which documents?</p> <p>3 Q. The documents you reviewed.</p> <p>4 A. Yes.</p> <p>5 Q. Okay. Did you make any notes on those</p> <p>6 documents?</p> <p>7 A. No.</p> <p>8 Q. Ms. Nguyen, what are you doing now for a</p> <p>9 living?</p> <p>10 A. I work for a financial institution.</p> <p>11 Q. And what's the name of that company?</p> <p>12 MR. SCHEFF: She's not comfortable</p> <p>13 disclosing the name.</p> <p>14 BY MR. GROGAN:</p> <p>15 Q. That's fine. And how long have you been</p> <p>16 working there?</p> <p>17 A. Probably two years now.</p> <p>18 Q. Okay. And what's your title there?</p> <p>19 A. Chief product officer.</p> <p>20 Q. Okay. And what's the nature of that</p> <p>21 company's business?</p> <p>22 A. It's a financial institution.</p> <p>23 Q. Okay. And what kind of financial products</p> <p>24 do they deal with?</p> <p>25 MR. SCHEFF: You can describe it</p>	<p style="text-align: right;">Page 15</p> <p>1 Q. Okay.</p> <p>2 A. 2015? 2014?</p> <p>3 MR. SCHEFF: I think it was '15.</p> <p>4 A. 2015. Sorry.</p> <p>5 BY MR. GROGAN:</p> <p>6 Q. 2015?</p> <p>7 A. That's correct. I'm sorry.</p> <p>8 Q. Okay. And what were the nature of your</p> <p>9 disagreements with Mr. Wong?</p> <p>10 A. We had personal differences.</p> <p>11 Q. I'm going to have to ask you to be a little</p> <p>12 more specific about that, if you could.</p> <p>13 MR. SCHEFF: She can't.</p> <p>14 MR. GROGAN: Why can't she?</p> <p>15 MR. SCHEFF: Because she's a party to</p> <p>16 an agreement which says that she can't disclose.</p> <p>17 And so unless -- she just can't without a court</p> <p>18 order.</p> <p>19 MR. GROGAN: Has there been litigation</p> <p>20 with regard to her termination?</p> <p>21 MR. SCHEFF: No.</p> <p>22 MR. GROGAN: Or her --</p> <p>23 BY MR. GROGAN:</p> <p>24 Q. Didn't say you were terminated. Your</p> <p>25 separation from the company?</p>
<p style="text-align: right;">Page 14</p> <p>1 generally.</p> <p>2 A. Online product loans.</p> <p>3 BY MR. GROGAN:</p> <p>4 Q. Similar to the kind of work that was done</p> <p>5 at Think Finance?</p> <p>6 MR. SCHEFF: You can answer generally.</p> <p>7 A. It's similar.</p> <p>8 BY MR. GROGAN:</p> <p>9 Q. Okay. And you say you've been there for</p> <p>10 two years?</p> <p>11 A. That's correct.</p> <p>12 Q. And is that in the Dallas metro area,</p> <p>13 generally speaking?</p> <p>14 A. That's correct.</p> <p>15 Q. Okay. Why did you leave Think Finance?</p> <p>16 A. I left Think Finance because the -- the</p> <p>17 management, specifically the -- I didn't see eye to</p> <p>18 eye with the CEO.</p> <p>19 Q. Mr. Rees?</p> <p>20 A. No. Martin Wong.</p> <p>21 Q. Mr. Wong?</p> <p>22 A. Correct.</p> <p>23 Q. I see. Okay. And so when did you leave</p> <p>24 Think Finance?</p> <p>25 A. I believe it was November of 2014.</p>	<p style="text-align: right;">Page 16</p> <p>1 MR. SCHEFF: No.</p> <p>2 BY MR. GROGAN:</p> <p>3 Q. But you've entered into a formal agreement</p> <p>4 with regard to that separation?</p> <p>5 A. That is correct.</p> <p>6 Q. Was there a period of time between leaving</p> <p>7 Think Finance and your new company where you were</p> <p>8 doing anything else?</p> <p>9 A. No.</p> <p>10 Q. How long was the period between leaving</p> <p>11 Think Finance and starting at your present job?</p> <p>12 A. I would say about six months.</p> <p>13 Q. Okay. And you were just home at that</p> <p>14 point?</p> <p>15 A. That is correct.</p> <p>16 Q. Okay. Where are you from? From Texas?</p> <p>17 A. That's correct.</p> <p>18 Q. Where did you go to college?</p> <p>19 A. Local. Southern Methodist University.</p> <p>20 Q. Have you done any post -- postgraduate</p> <p>21 work?</p> <p>22 A. Yes. I have an MBA at University of Texas</p> <p>23 at Dallas.</p> <p>24 Q. When did you get that?</p> <p>25 A. Oh, my. A while back.</p>

<p style="text-align: right;">Page 17</p> <p>1 Q. Okay. When did you graduate from college?</p> <p>2 A. I graduated in '97.</p> <p>3 Q. Okay. And what did you do after -- did you</p> <p>4 go right to graduate school, or did you work?</p> <p>5 A. I worked.</p> <p>6 Q. What did you do? Briefly --</p> <p>7 A. Sure. I worked for a telecom company</p> <p>8 called Nortel Networks. After that, I was at a</p> <p>9 startup. And then after that, I was at Intuit. And</p> <p>10 then I ended up at Think Finance, previously called</p> <p>11 PayDay One.</p> <p>12 Q. And were all of those jobs prior to PayDay</p> <p>13 One, were they all in the marketing area, one way or</p> <p>14 another?</p> <p>15 A. No. Some of them were finance, as well.</p> <p>16 Q. Okay.</p> <p>17 A. Finance degree.</p> <p>18 Q. Which ones were finance?</p> <p>19 A. At Nortel Networks.</p> <p>20 Q. Okay. What was your title there?</p> <p>21 A. When I left, I was a senior financial</p> <p>22 analyst.</p> <p>23 Q. Okay. And Nortel -- I'm sorry, was there</p> <p>24 one between Nortel and PayDay One?</p> <p>25 A. There's two.</p>	<p style="text-align: right;">Page 19</p> <p>1 A. That's correct.</p> <p>2 Q. Who did you meet with when you were</p> <p>3 exploring that -- coming to work with PayDay One?</p> <p>4 A. Are you talking about the interview?</p> <p>5 Q. Uh-huh (affirmative response).</p> <p>6 A. I met with Kevin Dahlstrom, Jason Harvison,</p> <p>7 Ken Rees, and probably someone in HR.</p> <p>8 Q. What was Mr. Dahlstrom's role in the</p> <p>9 company at that point?</p> <p>10 A. Chief marketing officer.</p> <p>11 Q. And what was Mr. Harvison's role?</p> <p>12 A. He was SVP. I can't recall the last part</p> <p>13 of his title.</p> <p>14 Q. Okay. And what was Mr. -- was Mr. Rees the</p> <p>15 CEO at that point?</p> <p>16 A. That's correct.</p> <p>17 Q. Okay. And was that -- what year was that?</p> <p>18 A. 2006.</p> <p>19 Q. And what was the title of the job that you</p> <p>20 were hired to undertake?</p> <p>21 A. Director of product.</p> <p>22 Q. Of product?</p> <p>23 A. Correct.</p> <p>24 Q. And did that have a vice presidential level</p> <p>25 title, or just a directorship?</p>
<p style="text-align: right;">Page 18</p> <p>1 Q. Okay. Go ahead, fill me in on that again.</p> <p>2 A. There was a startup called iChoose. And</p> <p>3 then after that, there was Intuit.</p> <p>4 Q. What was the nature of business of iChoose?</p> <p>5 A. iChoose was an online software company.</p> <p>6 Q. Okay. The next one? I'm sorry.</p> <p>7 A. Intuit, the makers of TurboTax and</p> <p>8 QuickBooks.</p> <p>9 Q. Okay. Good. And then you joined PayDay</p> <p>10 One?</p> <p>11 A. That's correct.</p> <p>12 Q. And was that the name of the company that</p> <p>13 you joined at that time?</p> <p>14 A. That's correct.</p> <p>15 Q. Okay. How did you get there?</p> <p>16 A. At the startup, the -- the CEO of the</p> <p>17 startup was actually also at PayDay One. And so it</p> <p>18 was a previous manager, if you will.</p> <p>19 Q. And who's that?</p> <p>20 A. Kevin Dahlstrom.</p> <p>21 Q. Okay. So you knew Kevin from the previous</p> <p>22 job?</p> <p>23 A. That's correct.</p> <p>24 Q. And did he recruit you to come to PayDay</p> <p>25 One?</p>	<p style="text-align: right;">Page 20</p> <p>1 A. It was director.</p> <p>2 Q. Okay. And can you describe, generally,</p> <p>3 what your duties were there at that -- in that first</p> <p>4 role?</p> <p>5 A. In the first role, I was responsible for</p> <p>6 the product roadmap for the internal products that</p> <p>7 PayDay One had. There were three products.</p> <p>8 Q. And what do you mean by an "internal</p> <p>9 product"?</p> <p>10 A. State-by-state licensing.</p> <p>11 Q. State-by-state licensing. Help me out.</p> <p>12 What does that mean?</p> <p>13 A. They were payday products. PayDay One is</p> <p>14 one of the websites. It was a state-by-state</p> <p>15 lender.</p> <p>16 Q. Doing business in each state based on the</p> <p>17 terms of that state's law?</p> <p>18 A. That is correct.</p> <p>19 Q. Okay. And how -- you said there were three</p> <p>20 products at that time. And what were those</p> <p>21 products?</p> <p>22 A. PayDay One, PayDay Okay, PayDay Select.</p> <p>23 Q. And generally speaking, if you can, what's</p> <p>24 the difference between the three?</p> <p>25 A. The difference was the brand, as well as</p>

<p style="text-align: right;">Page 21</p> <p>1 the marketing channel, as well as the -- the price</p> <p>2 points for each of the -- the offerings.</p> <p>3 Q. How about PayDay One, what was the</p> <p>4 marketing channel for PayDay One?</p> <p>5 A. At -- at which time?</p> <p>6 Q. When you started.</p> <p>7 A. When I started, it was just via search.</p> <p>8 Q. You were just out on the web, and the</p> <p>9 customer had to find you?</p> <p>10 A. We would purchase paid search ads.</p> <p>11 Q. I see. And the second product you</p> <p>12 mentioned, it slips my mind already.</p> <p>13 A. PayDay Okay.</p> <p>14 Q. And what was the marketing channel for</p> <p>15 PayDay Okay?</p> <p>16 A. That was also paid search ads at the time.</p> <p>17 Q. Okay. And the last one again? I'm sorry,</p> <p>18 I won't remember.</p> <p>19 A. PayDay Select.</p> <p>20 Q. Yes. What was the search -- or the</p> <p>21 marketing channel for that?</p> <p>22 A. We refer to it as lead generation and</p> <p>23 affiliate traffic.</p> <p>24 Q. Okay. And who were you partnering with for</p> <p>25 lead genera- -- or if you were partnering, who were</p>	<p style="text-align: right;">Page 23</p> <p>1 point versus the competitors. From an underwriting</p> <p>2 perspective, that was decided once a consumer</p> <p>3 applied.</p> <p>4 Q. Okay. And what were the criterion applied</p> <p>5 to determine which of the payday products the</p> <p>6 consumer eventually contracted with?</p> <p>7 A. I can't recall, because I was not</p> <p>8 responsible for the underwriting at that time.</p> <p>9 Q. So here's what I'm trying to understand,</p> <p>10 and maybe you can help me: You had three products,</p> <p>11 presumably addressed at slightly different consumer</p> <p>12 segments. Is that fair? Were each of the products</p> <p>13 targeted at a different consumer segment, or the</p> <p>14 same consumer segment?</p> <p>15 MR. SCHEFF: Object to the form.</p> <p>16 You can answer the question.</p> <p>17 A. So the -- each of the three products had a</p> <p>18 different price point and a different brand message</p> <p>19 for the consumers that were interested and they</p> <p>20 would apply.</p> <p>21 BY MR. GROGAN:</p> <p>22 Q. Okay. And, again, I'm trying to understand</p> <p>23 the characteristics of consumers who would be drawn</p> <p>24 to one of the three. How -- how would that -- how</p> <p>25 did you understand that as a marketing person? Who</p>
<p style="text-align: right;">Page 22</p> <p>1 you partnering with for lead generation and</p> <p>2 affiliate traffic?</p> <p>3 MR. SCHEFF: Object to the form.</p> <p>4 You can answer the question.</p> <p>5 A. I -- I can't recall at that time.</p> <p>6 BY MR. GROGAN:</p> <p>7 Q. And you talked about different price points</p> <p>8 among these products. What -- can you describe the</p> <p>9 differences for us?</p> <p>10 A. PayDay Okay was the low price point leader,</p> <p>11 was the -- the promise of that brand.</p> <p>12 Q. PayDay Okay. And when you say "low price</p> <p>13 point," from the perspective of a consumer, what</p> <p>14 does that mean for the consumer?</p> <p>15 A. It would be lower than other competitors</p> <p>16 with a similar offering online.</p> <p>17 Q. So a consumer with better credit might be</p> <p>18 afforded an opportunity to -- to go through PayDay</p> <p>19 Okay, or a consumer with worse credit?</p> <p>20 MR. GATEWOOD: Objection; form.</p> <p>21 BY MR. GROGAN:</p> <p>22 Q. I'm trying to understand which part of the</p> <p>23 market that product was aimed at.</p> <p>24 A. So from a marketing perspective, that was</p> <p>25 the brand, in terms of PayDay Okay had a lower price</p>	<p style="text-align: right;">Page 24</p> <p>1 was the typical customer of, say, PayDay Okay?</p> <p>2 MR. SHELDON: Object to the form.</p> <p>3 You can answer the question.</p> <p>4 A. For PayDay Okay, a consumer may do a search</p> <p>5 for a payday loan product, and the paid search ad</p> <p>6 would appear. And if they were interested in</p> <p>7 identifying with that brand and looking for a lower</p> <p>8 price point, then that would be the offering that</p> <p>9 they would pursue.</p> <p>10 BY MR. GROGAN:</p> <p>11 Q. And when you say "lower price point,"</p> <p>12 meaning it would be cheaper for them to -- to obtain</p> <p>13 credit from PayDay Okay than -- than other products?</p> <p>14 A. That is correct.</p> <p>15 Q. Okay. And I'm, again, trying to</p> <p>16 understand -- in my admittedly superficial</p> <p>17 understanding, I would think that pricing of credit</p> <p>18 products depends, in part, on the creditworthiness</p> <p>19 of the customer; that -- that is, a customer with</p> <p>20 stronger credit would be able to get a cheaper loan.</p> <p>21 Is that generally true?</p> <p>22 MR. SCHEFF: Object to form.</p> <p>23 MR. GATEWOOD: Objection; form.</p> <p>24 MR. SCHEFF: You can answer the</p> <p>25 question.</p>

<p style="text-align: right;">Page 85</p> <p>1 document?</p> <p>2 A. It's familiar.</p> <p>3 Q. Were you the author?</p> <p>4 A. No.</p> <p>5 Q. Okay. In what context do you recall having</p> <p>6 seen it?</p> <p>7 A. At a meeting.</p> <p>8 Q. Okay. Again, this document doesn't bear a</p> <p>9 date. The metadata indicates that it was created in</p> <p>10 November of 2010. Do you have any -- now, you</p> <p>11 notice there are similarities to the document we</p> <p>12 just looked at, P-116?</p> <p>13 A. Correct.</p> <p>14 Q. It looks like page 2 is essentially the</p> <p>15 same. Do you recall whether this document came</p> <p>16 after the document we saw at P-116?</p> <p>17 MR. GATEWOOD: Objection; form.</p> <p>18 A. I don't recall.</p> <p>19 BY MR. GROGAN:</p> <p>20 Q. Was it -- was this a document used at a</p> <p>21 subsequent meeting?</p> <p>22 MR. GATEWOOD: Objection; form.</p> <p>23 A. I would guess, yes.</p> <p>24 BY MR. GROGAN:</p> <p>25 Q. Okay. Couple of things on page 3 I want to</p>	<p style="text-align: right;">Page 87</p> <p>1 there are some initiatives that are assigned to</p> <p>2 various staff persons. I'm drawing your attention</p> <p>3 to page 5, "Sovereign Nation site," which appears to</p> <p>4 have been assigned to yourself and Jason Harvison.</p> <p>5 Do you see that?</p> <p>6 A. I see that.</p> <p>7 Q. Do you recall being assigned responsibility</p> <p>8 for an initiative referring to a sovereign nation</p> <p>9 site?</p> <p>10 A. Yes.</p> <p>11 Q. Okay. What did that mean?</p> <p>12 A. At this time, it was potentially working</p> <p>13 with a sovereign nation. And so for purposes of</p> <p>14 working with a sovereign nation, let's have ideation</p> <p>15 in terms of -- when I say "ideation," it's what</p> <p>16 would the offering look like in order to have</p> <p>17 discussions with a sovereign nation.</p> <p>18 Q. And by "sovereign nation," do you mean</p> <p>19 Native American tribes?</p> <p>20 A. That's correct.</p> <p>21 Q. Okay. You're also assigned the optimized</p> <p>22 ThinkCash migration and enterprise value with</p> <p>23 Mr. Harvison there. Was the thought at this point</p> <p>24 that it was -- might be possible to migrate some of</p> <p>25 the ThinkCash customer base to a sovereign nation</p>
<p style="text-align: right;">Page 86</p> <p>1 draw your attention to. You see the term "ThinkCash</p> <p>2 migration" again, and some of the other terms that</p> <p>3 were used before, but a couple of new ones. What</p> <p>4 does "process stability" refer to?</p> <p>5 MR. GATEWOOD: Objection; form.</p> <p>6 A. From what I recall in reading the -- the</p> <p>7 PowerPoint on page 6, it was internal process</p> <p>8 improvements.</p> <p>9 BY MR. GROGAN:</p> <p>10 Q. Internal to Think Finance?</p> <p>11 A. Internal to Think Finance, yeah.</p> <p>12 Q. Okay. What is Roadrunner?</p> <p>13 A. Roadrunner, from what I recall, it was the --</p> <p>14 the name of the initiative to upgrade our platform.</p> <p>15 Q. Okay. And --</p> <p>16 A. Loan management platform.</p> <p>17 Q. Okay. And was that initiative carried out?</p> <p>18 A. It was carried out. It was not completed.</p> <p>19 Q. Okay. That's the loan management platform</p> <p>20 that we discussed earlier that had the PayDay One</p> <p>21 products and the ThinkCash products?</p> <p>22 A. That was the -- the idea would be to</p> <p>23 upgrade the platform that was currently being used.</p> <p>24 Q. Okay. That's fine.</p> <p>25 And take a look -- starting on page 4,</p>	<p style="text-align: right;">Page 88</p> <p>1 site?</p> <p>2 MR. GATEWOOD: Objection; form.</p> <p>3 MR. SCHEFF: Object to the form.</p> <p>4 A. You know, from what I recall here, the idea</p> <p>5 was, as I stated before, to -- for customers that</p> <p>6 are paying off from a ThinkCash loan, and they</p> <p>7 needed a new loan, then offer them the opportunity</p> <p>8 to go to PayDay One if PayDay One was offered in</p> <p>9 their state.</p> <p>10 BY MR. GROGAN:</p> <p>11 Q. Okay.</p> <p>12 A. And we would present information about</p> <p>13 PayDay One.</p> <p>14 Q. Okay. And all the others?</p> <p>15 A. I'm sorry?</p> <p>16 Q. Those that couldn't go to PayDay One?</p> <p>17 A. I -- this -- as this was an initiative,</p> <p>18 there was still discovery on what to do, what to</p> <p>19 offer those customers.</p> <p>20 Q. And was one of the things you were</p> <p>21 discovering whether or not it could be -- a</p> <p>22 sovereign nation site might be an answer to that</p> <p>23 problem?</p> <p>24 MR. GATEWOOD: Objection; form.</p> <p>25 MR. SCHEFF: Object to the form.</p>

<p style="text-align: right;">Page 89</p> <p>1 A. So at this time, we did not have any</p> <p>2 discussions with sovereign nation, so I can't -- I</p> <p>3 don't -- I don't see that as the tie.</p> <p>4 BY MR. GROGAN:</p> <p>5 Q. Okay. Now -- but there did come a time</p> <p>6 when you had conversations with Native American</p> <p>7 tribes; is that correct?</p> <p>8 A. That's correct.</p> <p>9 Q. And I think I'm done with that document.</p> <p>10 When -- were you involved in any</p> <p>11 conversations with -- with Native American tribes?</p> <p>12 A. Yes.</p> <p>13 Q. In this time frame? And this would be the</p> <p>14 end of 2010, the beginning of 2011.</p> <p>15 A. Yes.</p> <p>16 Q. Okay. And you had been assigned the</p> <p>17 sovereign nations responsibility along with</p> <p>18 Mr. Harvison. Did you -- did Mr. Harvison also</p> <p>19 participate in those conversations with tribes?</p> <p>20 A. Some of them, correct.</p> <p>21 Q. Okay. Who else from Think Finance</p> <p>22 participated in those conversations?</p> <p>23 A. Do you mean the introductory meetings with</p> <p>24 the tribes?</p> <p>25 Q. Yeah.</p>	<p style="text-align: right;">Page 91</p> <p>1 Q. Okay. So you just were told, "We're going</p> <p>2 to go visit a tribe"?</p> <p>3 A. Yes.</p> <p>4 Q. And where did you go to visit?</p> <p>5 A. My first interaction with the individuals</p> <p>6 with a tribe was in South Dakota.</p> <p>7 Q. And which tribe was that?</p> <p>8 A. You know, I'm sorry, I can't remember the</p> <p>9 tribe itself. We actually met with an individual</p> <p>10 who was a tribal member.</p> <p>11 Q. Do you recall his or her name?</p> <p>12 A. Butch Webb.</p> <p>13 Q. Butch Webb. Did anything come of those</p> <p>14 conversations?</p> <p>15 A. We -- Jason Harvison was not part of that</p> <p>16 conversation. It was myself and some other</p> <p>17 individuals. We -- we met with Butch Webb, and he</p> <p>18 was already also a lender with another offering</p> <p>19 looking to -- looking to expand his offerings, and</p> <p>20 we had conversations, but we decided not to partner</p> <p>21 with Butch Webb.</p> <p>22 Q. Mr. Webb was associated with Western Sky,</p> <p>23 as my colleague tells me.</p> <p>24 A. Okay.</p> <p>25 Q. Did you know that?</p>
<p style="text-align: right;">Page 90</p> <p>1 A. It depended on everyone's availabilities.</p> <p>2 So Jason sometimes. Myself. Chris Lutes. Sarah</p> <p>3 Cutrona. Ken Rees.</p> <p>4 Q. Anybody else?</p> <p>5 A. I recall maybe a couple of meetings with</p> <p>6 Steve Schafer.</p> <p>7 Q. Who's Steve Schafer?</p> <p>8 A. At that time -- in this time period, 2010,</p> <p>9 2011, he was contracting with us from a business</p> <p>10 development perspective. We did not have a business</p> <p>11 development organization, if you will.</p> <p>12 Q. Did he have any other relationship to Think</p> <p>13 Finance?</p> <p>14 A. I don't recall at that exact time. Later</p> <p>15 on, he was -- I do recall him being a board member.</p> <p>16 I don't recall the overlap of time.</p> <p>17 Q. But at this time, you're not aware that he</p> <p>18 was a board member at the same time he was providing</p> <p>19 these consultation services?</p> <p>20 A. No, I -- I didn't know.</p> <p>21 Q. And the initial context with the tribes,</p> <p>22 where did you -- where did you find the tribes to</p> <p>23 talk to?</p> <p>24 A. I wasn't part of -- of that discovery</p> <p>25 process. I was part of the visiting the tribe.</p>	<p style="text-align: right;">Page 92</p> <p>1 A. I -- that does ring a bell.</p> <p>2 Q. Okay. So that didn't pan out. Who else</p> <p>3 did you meet with?</p> <p>4 A. I met with the Chippewa tribe, I met with</p> <p>5 the Otoe-Missouria tribe, and then eventually with</p> <p>6 the Tunica-Biloxi tribe.</p> <p>7 Q. Right. Those are the three tribes that did</p> <p>8 eventually do business with Think Finance; is that</p> <p>9 correct?</p> <p>10 A. That's correct. I also met with other</p> <p>11 tribes afterwards, as well. So. . .</p> <p>12 Q. Okay. Of those three, who did you meet</p> <p>13 with first?</p> <p>14 A. The very first one, I said, was Butch Webb.</p> <p>15 Q. I understand.</p> <p>16 A. It wasn't a -- a tribe. I can't recall if</p> <p>17 it was Chippewa or if it was the Otoe.</p> <p>18 Q. Now, were you aware of Think Finance, in</p> <p>19 addition to Mr. Schafer, using anybody else to help</p> <p>20 identify tribes that might be interested in working</p> <p>21 with Think Finance?</p> <p>22 MR. GATEWOOD: Objection; form.</p> <p>23 A. I was -- I was told of individuals.</p> <p>24 BY MR. GROGAN:</p> <p>25 Q. Did you meet with somebody called Steven</p>

<p style="text-align: right;">Page 93</p> <p>1 Haynes?</p> <p>2 A. I did not meet with Steven Haynes in 2010,</p> <p>3 2011.</p> <p>4 Q. You didn't meet with him as part of the</p> <p>5 process of interviewing with tribes?</p> <p>6 A. I met with Mr. Haynes in 2014.</p> <p>7 Q. Okay. Fine.</p> <p>8 How about somebody called Rick Eckman? Do</p> <p>9 you recognize that name?</p> <p>10 A. Yes.</p> <p>11 Q. Who is Rick Eckman?</p> <p>12 A. He's an attorney with Pepper Hamilton.</p> <p>13 Q. Was he at all involved in the process of</p> <p>14 identifying tribes that you might work with?</p> <p>15 A. I don't recall that specifically.</p> <p>16 Q. Okay. When you traveled to -- did you</p> <p>17 travel first to Oklahoma to the Otoe, or did you go</p> <p>18 first to -- which tribe did you go first to?</p> <p>19 A. I mean, I think as I stated earlier, I</p> <p>20 can't recall if it was Chippewa or Otoe. They're so</p> <p>21 far.</p> <p>22 Q. Can you recall going to Box Elder, Montana?</p> <p>23 A. I have been there. I can't recall the time</p> <p>24 period. I only recall going to Butch Webb first</p> <p>25 because it was my very first experience. That's why</p>	<p style="text-align: right;">Page 95</p> <p>1 Q. Okay. What was the purpose of your being</p> <p>2 on these meeting -- in on these meetings?</p> <p>3 A. My role was to discuss -- to have an</p> <p>4 ideation discussion with that tribe about if they --</p> <p>5 what their loan product would look like, talk about</p> <p>6 our offering as a service provider, how we can</p> <p>7 technically build something to their specifications,</p> <p>8 the look, the feel, that the tribe would like that</p> <p>9 would abide by that sovereign nation's essence, if</p> <p>10 you will, as well as structuring the term of the</p> <p>11 loan, the price point, the term, the loan amounts.</p> <p>12 Q. Let's focus on your discussions with the</p> <p>13 Otoe-Missouria tribe.</p> <p>14 A. Okay.</p> <p>15 Q. Was there any -- did they have any</p> <p>16 consultants working with them?</p> <p>17 A. Yes, they did.</p> <p>18 Q. And who was that?</p> <p>19 A. MacFarlane Group.</p> <p>20 Q. And what is the MacFarlane Group?</p> <p>21 A. They're a consulting company with the --</p> <p>22 that managed the Otoes' other portfolio, which was</p> <p>23 American Web Loan.</p> <p>24 Q. I see. So the Otoe-Missouria tribe already</p> <p>25 had a loan product?</p>
<p style="text-align: right;">Page 94</p> <p>1 I remember that.</p> <p>2 Q. Do you recall that in -- in the process of</p> <p>3 identifying tribes to work with, did you travel to</p> <p>4 Montana, or was that at some later time?</p> <p>5 A. I believe what I recall is a meeting and</p> <p>6 traveling to Box Elder after an initial agreement</p> <p>7 was -- was established.</p> <p>8 Q. Did you ever travel to Las Vegas in</p> <p>9 connection with meeting with tribes?</p> <p>10 A. No, I did not.</p> <p>11 Q. Do you know if anybody at Think Finance</p> <p>12 did?</p> <p>13 A. Yes.</p> <p>14 Q. Who was that?</p> <p>15 A. Jason Harvison.</p> <p>16 Q. Okay. Was Jason spearheading this effort?</p> <p>17 MR. GATEWOOD: Objection; form.</p> <p>18 A. Which effort?</p> <p>19 BY MR. GROGAN:</p> <p>20 Q. The effort to identify tribes that you</p> <p>21 might work with.</p> <p>22 A. He was -- he was part of -- of that.</p> <p>23 Q. Okay. And were you involved in the</p> <p>24 negotiation of the terms with any of the tribes?</p> <p>25 A. I was not involved in 2011.</p>	<p style="text-align: right;">Page 96</p> <p>1 A. That's correct.</p> <p>2 Q. Okay. And was the MacFarlane -- were</p> <p>3 MacFarlane people involved in -- in the discussions</p> <p>4 from the beginning?</p> <p>5 A. In the discussions with Otoe?</p> <p>6 Q. No. With Think Finance and Otoe, yes.</p> <p>7 A. They were part of that -- they were part of</p> <p>8 the -- the meetings.</p> <p>9 Q. Do you recall the names of the folks who</p> <p>10 worked with MacFarlane?</p> <p>11 A. Yes.</p> <p>12 Q. And who were they?</p> <p>13 A. Mark Curry. Eric -- it just escaped, the</p> <p>14 name. It was our account -- Eric -- it's not --</p> <p>15 Eric wasn't there, actually. John -- John Hurts.</p> <p>16 Michael Page.</p> <p>17 Q. Was Mr. Curry a principal at MacFarlane?</p> <p>18 Are you aware?</p> <p>19 A. I don't know the definition of the</p> <p>20 "principal."</p> <p>21 Q. Was he the owner?</p> <p>22 A. My understanding, he was the owner.</p> <p>23 Q. How about your trips -- or your</p> <p>24 conversations with what became the Plain Green</p> <p>25 group, the Chippewa tribe in Montana, did your first</p>

<p style="text-align: right;">Page 137</p> <p>1 Q. Okay. Good.</p> <p>2 With regard to Great Plains, was</p> <p>3 MacFarlane still playing a role?</p> <p>4 A. Correct.</p> <p>5 Q. What was the role that they were playing</p> <p>6 with Great Plains Lending?</p> <p>7 A. As I mentioned, MacFarlane was already</p> <p>8 working with Otoe. They had the other offering, the</p> <p>9 American Web Loan product, but they also supported</p> <p>10 the -- that tribe for back-end services, such as</p> <p>11 hiring of the call center folks, HR, payroll,</p> <p>12 their -- their books, if you will, the financials,</p> <p>13 reconciling their P&L.</p> <p>14 Q. Did Mobiloans or Plain Green have a similar</p> <p>15 organization working with them?</p> <p>16 MR. GATEWOOD: Objection; form.</p> <p>17 MR. SCHEFF: Object to the form.</p> <p>18 A. Plain Green did not have a back-end</p> <p>19 consulting organization, that I was aware of. And</p> <p>20 Mobiloans did not have one. Mobiloans would utilize</p> <p>21 different vendors to assist because they were a</p> <p>22 startup and they can't do everything in-house.</p> <p>23 BY MR. GROGAN:</p> <p>24 Q. Good.</p> <p>25 Take a look at page 7, if you would.</p>	<p style="text-align: right;">Page 139</p> <p>1 and so it caused some unacceptable defects that we</p> <p>2 had to work through.</p> <p>3 Q. Okay. But those defects would have been</p> <p>4 caused by Think Finance difficulties, or -- or</p> <p>5 deficits at Mobiloans?</p> <p>6 MR. SCHEFF: Object to the form.</p> <p>7 A. This line specifically was the platform</p> <p>8 defects, and so it was the platform itself. You</p> <p>9 know, it could be within the CoreCard build itself,</p> <p>10 which is not something that was proprietary to Think</p> <p>11 Finance. Or it could have been around the platform</p> <p>12 itself that touched CoreCard. So it's both pieces.</p> <p>13 BY MR. GROGAN:</p> <p>14 Q. Right. But Mobiloans didn't have CoreCard</p> <p>15 within their purview, right? That was something</p> <p>16 that Think Finance had?</p> <p>17 MR. GATEWOOD: Objection; form.</p> <p>18 A. CoreCard is part of the platform that was</p> <p>19 licensed to --</p> <p>20 BY MR. GROGAN:</p> <p>21 Q. Who licensed it?</p> <p>22 A. Who licensed. . .</p> <p>23 Q. CoreCard.</p> <p>24 A. Oh, I don't -- I don't recall. I don't</p> <p>25 know. I'd have to look at the contracts. I was --</p>
<p style="text-align: right;">Page 138</p> <p>1 These are benchmarks of what you think an industry</p> <p>2 leader looked like? Is that a fair statement of</p> <p>3 what this is trying to capture?</p> <p>4 A. That's -- that's a fair statement.</p> <p>5 Q. Okay. And, again, the same -- same drill:</p> <p>6 If there's not a checkmark, that means it's missing</p> <p>7 from that particular tribal product?</p> <p>8 MR. SCHEFF: Object to the form.</p> <p>9 A. If it was not a checkmark, then this is my</p> <p>10 opinion --</p> <p>11 BY MR. GROGAN:</p> <p>12 Q. Okay.</p> <p>13 A. -- of what was lacking and what needed to</p> <p>14 be improved.</p> <p>15 Q. Okay. And with regard to "stable and</p> <p>16 scalable product with minimal compliance defects,"</p> <p>17 that's -- Plain Green and GPL are okay, in your --</p> <p>18 in your opinion, at that point?</p> <p>19 A. That's correct.</p> <p>20 Q. But Mobiloans was still challenged in that</p> <p>21 area?</p> <p>22 A. That's correct. I think -- you recall that</p> <p>23 I said that we had utilized a different loan</p> <p>24 management system, the CoreCard. Because it wasn't</p> <p>25 built in-house, we didn't know all the ins and outs,</p>	<p style="text-align: right;">Page 140</p> <p>1 Q. But was it Think Finance or Mobiloans?</p> <p>2 MR. GATEWOOD: Objection; form.</p> <p>3 BY MR. GROGAN:</p> <p>4 Q. Or a Think Finance-related entity?</p> <p>5 MR. GATEWOOD: Same objection.</p> <p>6 A. I -- I don't know. That's a technical -- I</p> <p>7 was not part of that.</p> <p>8 BY MR. GROGAN:</p> <p>9 Q. That's fine.</p> <p>10 What was the metric that you were using in</p> <p>11 determining whether there were minimal compliance</p> <p>12 defects? Do you recall?</p> <p>13 MR. GATEWOOD: Objection; form.</p> <p>14 A. I don't -- there was not another piece of</p> <p>15 paper that had 12 items. This is based on my</p> <p>16 opinion from a product perspective and if there were</p> <p>17 defects. Any defect as a platform provider is not</p> <p>18 acceptable.</p> <p>19 BY MR. GROGAN:</p> <p>20 Q. And I just want to be clear. When you say</p> <p>21 a "stable platform" in that -- that item, you're</p> <p>22 talking about the technical loan platform, you're</p> <p>23 not talking about, for instance, tribal leadership</p> <p>24 or marketing --</p> <p>25 A. I'm talking about the technical platform.</p>

<p style="text-align: right;">Page 141</p> <p>1 Q. Take a look at page 9, if you would. And</p> <p>2 here, I want to use this slide really to educate</p> <p>3 myself about the way in which lead generation worked</p> <p>4 across all three tribal products. And we talked a</p> <p>5 little bit about lead generation earlier. And here</p> <p>6 it says, "Today for DM" -- which I take it to be</p> <p>7 "direct mail"?</p> <p>8 A. That's correct.</p> <p>9 Q. Okay. -- "RISE takes first pass at DM</p> <p>10 states, then split between the tribes."</p> <p>11 And just -- can you explain what you meant</p> <p>12 by that?</p> <p>13 A. So from what I recall, this is really in</p> <p>14 regards to just direct mail as a marketing channel,</p> <p>15 not lead generation. And as a marketing and risk</p> <p>16 organization, we're able to identify a population of</p> <p>17 customers to send a direct mail piece that was</p> <p>18 both -- that will respond at a reasonable default</p> <p>19 rate. Those are our definitions.</p> <p>20 And so from this statement, it indicated</p> <p>21 that we would take the universe of customers that</p> <p>22 would respond at a reasonable default rate, and RISE</p> <p>23 would leverage those states first, and then the</p> <p>24 remaining universe would be split between the three</p> <p>25 tribes, from a marketing perspective.</p>	<p style="text-align: right;">Page 143</p> <p>1 offering.</p> <p>2 Q. Okay. But why isn't it offered in all</p> <p>3 states?</p> <p>4 A. RISE is offered in the states that allow</p> <p>5 installment loans per legal analysis.</p> <p>6 Q. Okay. So, for instance, RISE is not</p> <p>7 offered in Pennsylvania -- or was not offered in</p> <p>8 Pennsylvania?</p> <p>9 A. I mean, I'd have to go back and look at the</p> <p>10 detail there --</p> <p>11 Q. You don't know that?</p> <p>12 A. -- at 2013.</p> <p>13 Q. You don't know that?</p> <p>14 A. I was working with Plain Green, Mobiloans,</p> <p>15 and Great Plains.</p> <p>16 Q. Fair enough.</p> <p>17 Would it be -- was RISE ever offered in a</p> <p>18 state where one of the tribal products was also</p> <p>19 offered?</p> <p>20 MR. GATEWOOD: Objection; form.</p> <p>21 A. Yes.</p> <p>22 BY MR. GROGAN:</p> <p>23 Q. And what states would those be, if you</p> <p>24 recall?</p> <p>25 A. Oh, I'm -- I can't recall all the states on</p>
<p style="text-align: right;">Page 142</p> <p>1 Q. Okay. First of all, let's define what RISE</p> <p>2 is at this point. This is -- this is July 2013.</p> <p>3 A. RISE is the -- at this time, was the -- the</p> <p>4 direct lender installment loan offering.</p> <p>5 Q. Okay. And that is -- is that the product</p> <p>6 line that went to Elevate after the split?</p> <p>7 A. That's correct.</p> <p>8 Q. Or one of the product lines?</p> <p>9 A. That's correct.</p> <p>10 Q. Okay. But you didn't have responsibility</p> <p>11 for RISE?</p> <p>12 A. Not at this time.</p> <p>13 Q. Did you come to have responsibility for</p> <p>14 RISE?</p> <p>15 A. In the early days, but not after. I was</p> <p>16 responsible for --</p> <p>17 Q. Okay. So RISE is the installment loan</p> <p>18 product that is directed at certain states.</p> <p>19 MR. GATEWOOD: Objection; form.</p> <p>20 BY MR. GROGAN:</p> <p>21 Q. Is that correct? Or is it offered in all</p> <p>22 states?</p> <p>23 A. RISE is not offered in all states.</p> <p>24 Q. Why not?</p> <p>25 A. RISE is a state-by-state installment loan</p>	<p style="text-align: right;">Page 144</p> <p>1 the state list. And I would have to compare --</p> <p>2 unless you have something and we can look at it.</p> <p>3 Q. Well --</p> <p>4 A. It's all 50 states, and each state -- each</p> <p>5 tribe had different states.</p> <p>6 Q. Was RISE offered in California?</p> <p>7 A. I believe so in 2013.</p> <p>8 Q. Okay. Were any of the tribal products</p> <p>9 offered in California?</p> <p>10 A. Yes.</p> <p>11 Q. Okay. And they were competitors in that</p> <p>12 context?</p> <p>13 A. Yes.</p> <p>14 Q. Okay. All right. You're talking about</p> <p>15 direct mail here. And who's underwriting the cost</p> <p>16 of the direct mail?</p> <p>17 MR. SCHEFF: Object to the form.</p> <p>18 BY MR. GROGAN:</p> <p>19 Q. Or a better -- less lawyerly way, who's</p> <p>20 paying for direct mail here, the direct mail that's</p> <p>21 discussed in this. . .</p> <p>22 A. What -- so there's different pieces of</p> <p>23 cost? What -- can you specify?</p> <p>24 Q. What I'm trying to get at is, the direct</p> <p>25 mail -- the flow of direct mail that's being</p>

<p style="text-align: right;">Page 145</p> <p>1 referenced here, this says half of it, RISE has</p> <p>2 access to. They get the first pass. What did that</p> <p>3 mean?</p> <p>4 MR. SCHEFF: Object to the form.</p> <p>5 A. You know, from what I recall, it's -- you</p> <p>6 know RISE, as I said before, the -- we identify the</p> <p>7 universe of consumers that are responsive and would</p> <p>8 have a decent default, and then we would overlap</p> <p>9 them with the RISE states, and then anything --</p> <p>10 remainder, we would -- as this says, we would split</p> <p>11 amongst the tribes.</p> <p>12 BY MR. GROGAN:</p> <p>13 Q. Who's "we"?</p> <p>14 A. The -- as a marketing agency --</p> <p>15 Q. That's what you'd do? You'd allocate them</p> <p>16 first to RISE, and then if there were a remainder,</p> <p>17 to tribal products; is that right?</p> <p>18 MR. GATEWOOD: Objection; form.</p> <p>19 A. We -- as -- you know, as I stated, we would</p> <p>20 identify those for RISE, and then any of the</p> <p>21 remainders, we would recommend splitting them up</p> <p>22 between the other three tribes --</p> <p>23 BY MR. GROGAN:</p> <p>24 Q. And how would you --</p> <p>25 A. -- or direct mail.</p>	<p style="text-align: right;">Page 147</p> <p>1 their budget. Or, actually, I would say the end of</p> <p>2 the prior year for budget planning purposes. And we</p> <p>3 would talk to them about their revenue goals, and we</p> <p>4 would back into: Well, if you want X, then you need</p> <p>5 Y type of customers at XZ assumption in terms of</p> <p>6 revenue.</p> <p>7 And so we would create a budget like any</p> <p>8 organization. We would work with them as a</p> <p>9 marketing organization, and we'd say: Okay, this is</p> <p>10 your budget for X amount of customers. We would try</p> <p>11 to meet that with these different channels, whether</p> <p>12 it be direct mail, or -- you know, for Great Plains,</p> <p>13 it also included lead generation, paid search,</p> <p>14 affiliate traffic.</p> <p>15 BY MR. GROGAN:</p> <p>16 Q. Now, direct mail, by its nature, is an</p> <p>17 invitation to a customer to respond to a particular</p> <p>18 product offering; is that right?</p> <p>19 A. In general.</p> <p>20 Q. So there would be direct mail that would</p> <p>21 say, "Please call RISE if you want a loan," right?</p> <p>22 And there would be some direct mail that said,</p> <p>23 "Please call Plain Green if you want a loan," right?</p> <p>24 MR. GATEWOOD: Objection; form.</p> <p>25 A. There's different versions of direct mail.</p>
<p style="text-align: right;">Page 146</p> <p>1 Q. -- split them up -- how would you split</p> <p>2 them up between the tribes?</p> <p>3 A. You know, it really depended on different</p> <p>4 factors.</p> <p>5 Q. Like what factors?</p> <p>6 A. What the goals were for each of the tribes</p> <p>7 in terms of the revenue growth, what each tribe</p> <p>8 looked like in terms of their offering. You know,</p> <p>9 Great Plains had a higher APR, and so they were --</p> <p>10 that product was inclined to take a riskier customer</p> <p>11 base, as well as the other channels that the tribes</p> <p>12 were interested in. And so all of those came into</p> <p>13 play when we talked about the direct mail pieces and</p> <p>14 where they went.</p> <p>15 Q. Okay. And who would get direct mail and</p> <p>16 who wouldn't?</p> <p>17 A. Again, like, it's all of those factors that</p> <p>18 I indicated.</p> <p>19 Q. Okay. And you said one of the factors was</p> <p>20 what the goals for the revenue growth of the</p> <p>21 individual tribal products was. Whose goals were</p> <p>22 they?</p> <p>23 MR. GATEWOOD: Objection; form.</p> <p>24 A. In the beginning of each year, we would</p> <p>25 meet with each of the tribes, because they're doing</p>	<p style="text-align: right;">Page 148</p> <p>1 There could be a pre-approval. There could be an</p> <p>2 invitation to apply. There could be another -- a</p> <p>3 repeat customer direct mail piece to remind them of</p> <p>4 the brand.</p> <p>5 BY MR. GROGAN:</p> <p>6 Q. Right. But they would all be</p> <p>7 brand-specific, wouldn't they?</p> <p>8 A. That's correct.</p> <p>9 Q. Okay. Okay. So you're -- okay. That's</p> <p>10 fine.</p> <p>11 It says, "No current differentiation</p> <p>12 between other channels today. Should other channels</p> <p>13 follow DM volume split?"</p> <p>14 And my first question is, what are the</p> <p>15 other channels?</p> <p>16 A. I -- you know, the -- I -- I can't really</p> <p>17 remember this -- this bullet point. I mean. . .</p> <p>18 Q. Did you mean other marketing channels?</p> <p>19 A. Yes. But I don't -- I can't remember why I</p> <p>20 put this here. Sorry. I just really can't</p> <p>21 remember.</p> <p>22 Q. Okay. Well, what are -- what are the other</p> <p>23 marketing channels?</p> <p>24 A. Paid search, lead generation. Lead</p> <p>25 generation was really only for Great Plains.</p>

<p style="text-align: right;">Page 149</p> <p>1 Affiliate traffic for all three. And then there's</p> <p>2 repeat -- repeat customers are also considered a</p> <p>3 channel.</p> <p>4 Q. This document was created for the executive</p> <p>5 offsite, right?</p> <p>6 A. That's correct.</p> <p>7 Q. Were tribal members or -- or</p> <p>8 representatives of Plain Green, Mobiloans, or Great</p> <p>9 Plains at that -- at those meetings?</p> <p>10 A. No.</p> <p>11 Q. Okay. Now, "Items to consider," and you</p> <p>12 have some characteristics of the three different</p> <p>13 tribal lending organizations. For instance,</p> <p>14 Mobiloans is -- has "Strong political influence,"</p> <p>15 "Lowest profit share," "Currently most profitable,</p> <p>16 but will change as we lower pricing."</p> <p>17 Now, what are these items to consider</p> <p>18 relevant to?</p> <p>19 A. They were -- from what I'm thinking, from</p> <p>20 what I recall, these items were relevant for</p> <p>21 identifying the best channels for each of the</p> <p>22 different portfolios.</p> <p>23 Q. I see.</p> <p>24 A. So an example would be that, you know, as</p> <p>25 Mobiloans is currently the most profitable, but will</p>	<p style="text-align: right;">Page 151</p> <p>1 Q. And for Think Finance?</p> <p>2 A. No, we -- it all depended on, you know,</p> <p>3 each of the -- each of the contracts with each</p> <p>4 tribes were different. But. . .</p> <p>5 Q. I'm sorry, are you suggesting that a</p> <p>6 profitable Mobiloans product is not profitable to</p> <p>7 Think Finance?</p> <p>8 A. No, I --</p> <p>9 MR. GATEWOOD: Objection; form.</p> <p>10 MR. SCHEFF: Misstates the testimony.</p> <p>11 MR. GROGAN: Okay. I'm just asking</p> <p>12 for the clarity.</p> <p>13 MR. SCHEFF: Let's not play games</p> <p>14 here.</p> <p>15 MR. GROGAN: Richard.</p> <p>16 MR. SCHEFF: You're just playing</p> <p>17 games. She -- you know she didn't say that. Just</p> <p>18 ask your question.</p> <p>19 MR. GROGAN: I'm just asking her to</p> <p>20 clarify that.</p> <p>21 A. I -- I didn't say that. I said --</p> <p>22 BY MR. GROGAN:</p> <p>23 Q. Okay. What did you say?</p> <p>24 A. -- profitable -- I said profitable equals</p> <p>25 revenue minus the losses, and that would be</p>
<p style="text-align: right;">Page 150</p> <p>1 change over lower pricing, I indicated that the</p> <p>2 tribe really wanted a rewards program, thus would</p> <p>3 lower the pricing. To that end, a lead generation</p> <p>4 as a channel would not fit in terms of that</p> <p>5 Mobiloans offering, because typically lead</p> <p>6 generation has a higher default -- has a higher</p> <p>7 default with a lower price at the spread or the --</p> <p>8 and won't be profitable for that tribe.</p> <p>9 Q. And when you're saying Mobiloans is</p> <p>10 currently the most profitable, profitable to whom?</p> <p>11 A. I believe when I was writing this, it was</p> <p>12 just in general, in terms of revenue minus the</p> <p>13 losses. So the interest revenue minus the losses.</p> <p>14 Q. But most profitable to Think Finance?</p> <p>15 MR. GATEWOOD: Objection; form.</p> <p>16 MR. SCHEFF: Object to the form.</p> <p>17 A. I -- I didn't say that. I said profitable</p> <p>18 as it pertains to -- I always looked at revenue</p> <p>19 minus losses. Keep it simple in terms of that.</p> <p>20 BY MR. GROGAN:</p> <p>21 Q. Right. But a profitable product -- a</p> <p>22 profitable Mobiloans product is profitable for Think</p> <p>23 Finance and Mobiloans, right?</p> <p>24 A. A profitable product is definitely</p> <p>25 profitable for the Tunica tribe, absolutely.</p>	<p style="text-align: right;">Page 152</p> <p>1 profitable for the tribe. And as a service</p> <p>2 provider, we wanted to make sure that each of our</p> <p>3 tribes were profitable and meeting their budgets.</p> <p>4 Q. Because it was profitable to Think Finance,</p> <p>5 right?</p> <p>6 MR. SCHEFF: Object to the form;</p> <p>7 misstates the testimony.</p> <p>8 BY MR. GROGAN:</p> <p>9 Q. Okay. With regard to Mobiloans, it says</p> <p>10 "lowest profit share." What does that refer to?</p> <p>11 A. I believe that refers to the -- their</p> <p>12 profit share of the agreements.</p> <p>13 Q. So they -- they're receiving the lowest</p> <p>14 profit share of -- relative to the other two tribal</p> <p>15 products?</p> <p>16 A. That -- this is relative to the other two</p> <p>17 tribal products.</p> <p>18 Q. And are we talking about the revenue share?</p> <p>19 A. This is profit share.</p> <p>20 Q. Okay.</p> <p>21 A. But it's probably misstated.</p> <p>22 Q. Okay. It says profit share, but do you</p> <p>23 think it referred to revenue share?</p> <p>24 MR. SCHEFF: Object to the form.</p> <p>25 You can answer the question.</p>

<p style="text-align: right;">Page 153</p> <p>1 A. I probably misstated.</p> <p>2 BY MR. GROGAN:</p> <p>3 Q. Okay. But I'm just trying to understand</p> <p>4 that -- the tribes profited -- the tribal lending</p> <p>5 entities profited both from the -- the 1 percent --</p> <p>6 the gain on the 1 percent of the loans that they</p> <p>7 retained, right, after the sale of 99 percent to</p> <p>8 GPLS, correct?</p> <p>9 MR. GATEWOOD: Objection; form.</p> <p>10 MR. SCHEFF: Object to the form.</p> <p>11 A. Each tribe was different in terms of their</p> <p>12 participation and how much they held and the end</p> <p>13 state.</p> <p>14 BY MR. GROGAN:</p> <p>15 Q. Okay.</p> <p>16 A. And they did -- they would participate it</p> <p>17 out to GPLS.</p> <p>18 Q. Okay. And they also shared -- in addition</p> <p>19 to whatever stake they retained participation in the</p> <p>20 loan, they also shared through a revenue share</p> <p>21 after -- from GPLS after the expenses were cleared;</p> <p>22 is that correct?</p> <p>23 MR. GATEWOOD: Objection; form.</p> <p>24 A. From what I recall, the -- each of the</p> <p>25 tribes would gain revenue from a revenue share</p>	<p style="text-align: right;">Page 155</p> <p>1 stable tribe." What did you mean by that?</p> <p>2 A. This is in 2013, so it was probably due to</p> <p>3 the change of the -- their -- their chairman and the</p> <p>4 council. Tribal council.</p> <p>5 Q. And how is that relevant to what kind of</p> <p>6 marketing channels and direct mail share they could</p> <p>7 get?</p> <p>8 A. I can't recall. I think it's the same as</p> <p>9 the political influence. I don't know why I put</p> <p>10 that, other than maybe it's items to consider for</p> <p>11 discussion. I don't -- I really can't recall why I</p> <p>12 put that in there as it ties to that.</p> <p>13 Q. Okay. And "GPL's profit share is</p> <p>14 negotiable." What does that mean?</p> <p>15 A. I don't know why I put "negotiable" either.</p> <p>16 Their -- their structure was different than Plain</p> <p>17 Green and Mobiloans. So I don't know why I put</p> <p>18 "negotiable." I don't believe at the time, the</p> <p>19 contracts were up. So. . .</p> <p>20 Q. Okay. If you turn to page 10, there's a</p> <p>21 "Discussion," with a question mark, "Another tribe."</p> <p>22 A. Uh-huh (affirmative response).</p> <p>23 Q. And at this particular offsite, were you</p> <p>24 discussing whether another tribe was a desirable</p> <p>25 partnership with -- strike that.</p>
<p style="text-align: right;">Page 154</p> <p>1 perspective.</p> <p>2 BY MR. GROGAN:</p> <p>3 Q. Okay. All right. Why would the -- the</p> <p>4 Mobiloans political influence be relevant to</p> <p>5 consider in what kind of direct mail or marketing</p> <p>6 channel flow they should get?</p> <p>7 A. You know, I can't recall why I put that in</p> <p>8 here. I apologize, I just -- I don't know why.</p> <p>9 Q. That's fine.</p> <p>10 A. It's been so long.</p> <p>11 Q. That's fine.</p> <p>12 With regard to Plain Green, it says "large</p> <p>13 portfolio." Were they the largest in terms of</p> <p>14 volume -- volume of loans among the three tribal</p> <p>15 products?</p> <p>16 A. I think what I meant here in 2013 was that</p> <p>17 they had the largest outstandings.</p> <p>18 Q. Okay. Is that different than having the</p> <p>19 largest loan volume?</p> <p>20 A. Yes.</p> <p>21 Q. How so?</p> <p>22 A. Outstandings is comprised of customers,</p> <p>23 which is loans, but also in terms of the dollar</p> <p>24 amount lent.</p> <p>25 Q. I see. But they're "currently the least</p>	<p style="text-align: right;">Page 156</p> <p>1 Were you discussing looking for another</p> <p>2 tribal relationship?</p> <p>3 A. It would appear so.</p> <p>4 Q. Okay. Why would you do that?</p> <p>5 A. You know, I think the -- as a service</p> <p>6 provider, we were considering, you know, these other</p> <p>7 two have evolved and they're not in startup mode,</p> <p>8 and so do we have the bandwidth to -- you know,</p> <p>9 bring up a -- start up -- have another startup with</p> <p>10 another tribe, because we do realize that there</p> <p>11 were -- there might be other opportunities out</p> <p>12 there.</p> <p>13 Q. Okay. I just want to be clear. You said</p> <p>14 that the two other had evolved and were no longer in</p> <p>15 startup mode. Which two are you referring to?</p> <p>16 A. No, I didn't mean to say two. I said the</p> <p>17 others over two years have evolved.</p> <p>18 Q. Okay.</p> <p>19 A. I didn't mean two, as two tribes.</p> <p>20 Q. Okay. So you meant all three tribal</p> <p>21 products?</p> <p>22 A. Correct.</p> <p>23 Q. Okay. And they evolved to a point that</p> <p>24 would allow them to do what?</p> <p>25 A. I had indicated that they had evolved, but</p>

1 they're not in startup mode, and so they were
2 already taking on tasks on their own. They were --
3 a lot of them were in different stages of startup,
4 meaning they were proficient in other areas. And so
5 allowed Think Finance to leverage those -- the
6 platform as a service provider.

7 Q. Fine.

8 What does it mean to say "as backup for
9 Plain Green"?

10 A. I believe at this time, there was
11 consideration that because of the tribal council --
12 as I indicated, that the chairmans -- there was
13 issues there. I think there was concern that would
14 Plain Green still be in existence due to the -- the
15 tribal council's change.

16 Q. And -- okay. So there was a concern that
17 they might -- they might exit the market for one
18 reason or another?

19 A. Correct.

20 Q. Okay. "Participate in a fund versus GPLS."
21 Do you know what -- do you know what that means?

22 A. I believe what I wrote here was: Is there
23 an opportunity to work with another entity other
24 than GPLS?

25 Q. Okay. Because at this point, GPLS is the

1 entity which is buying participations from each of
2 the three tribal products; is that correct?

3 A. From my understanding, GPLS was
4 participating with each of the tribes.

5 Q. Okay. And there's nobody else purchasing
6 participations other than GPLS; is that correct?

7 A. I'm not aware of other individuals that
8 were participating in -- in the tribe's portfolios.

9 Q. So is it fair to say that that line refers
10 to the -- the thought experiment about whether
11 another way of purchasing participations through
12 another fund, not GPLS, might be considered?

13 MR. GATEWOOD: Objection; form.

14 A. I think, like I stated before, it was in
15 consideration of a different fund other than GPLS or
16 a different tribe.

17 BY MR. GROGAN:

18 Q. Okay. I'm sorry, I know this is tedious,
19 but this is an important document to us.

20 If you look at page 11. And my question
21 is really just, what is Nortridge?

22 A. Nortridge is a different loan management
23 system. I had mentioned CoreCard. I had mentioned
24 that we had our own internal platform. We're not
25 happy with CoreCard, as I indicated earlier, and so

1 there was a concept of: Do we utilize Nortridge as
2 a different platform for the loan management system
3 to incorporate into our overall platform schema, if
4 you will.

5 Q. Okay. And did you go ahead with that and
6 create a third platform?

7 A. Not when I was there.

8 Q. Okay. So the -- the Nortridge platform was
9 never brought into -- into use in your time?

10 A. That's correct.

11 Q. Okay. Which platform had RISE on it at
12 this time?

13 A. At this time, the platform that the
14 installment loan programs were on.

15 Q. The Great Plains and Plain Green?

16 A. That's correct.

17 Q. So not CoreCard, the -- the old --

18 A. That's right.

19 Q. Okay. And it says here, "ILP," which I
20 understand to be "installment loan programs"?

21 A. Yes.

22 Q. Okay. They're on the Legacy platform, and
23 it's stable; is that --

24 A. Yes.

25 Q. Okay. And the legacy platform is the old

1 platform where PDO and ThinkCash resided way back?

2 MR. SCHEFF: Object to the form.

3 A. We would call the legacy platform as the
4 original platform. And, correct, PayDay One and
5 ThinkCash utilized that platform.

6 BY MR. GROGAN:

7 Q. What does it mean, "Do you invest minimum
8 number of enhancements and redirect resources to
9 direct products?" And let me ask a further
10 question. What is a direct product in that context?

11 A. I believe I was referring to the RISE
12 product.

13 Q. Okay. And you're -- "invest minimum number
14 of enhancements," enhancements in what?

15 A. Enhancements in the Legacy platform.

16 Q. Okay. And "redirect resources to the RISE
17 product"?

18 A. In order to build out the -- the new
19 platform with Nortridge.

20 Q. I see. So move resources from the existing
21 platform, and redirect it to the RISE products?

22 A. No.

23 Q. Okay.

24 A. That's not what I meant.

25 Q. All right. What did you mean? I'm sorry.

<p style="text-align: right;">Page 161</p> <p>1 A. So technically, when you're talking about</p> <p>2 an IT platform, and if it's a legacy and if it's</p> <p>3 stable, and you know that you want to enhance it,</p> <p>4 then you would make sure it's stable, and then</p> <p>5 direct your resources to a new -- a new platform</p> <p>6 while you build it up.</p> <p>7 You don't want to move all of your</p> <p>8 offerings, regardless of your organization, because</p> <p>9 that's not -- that's not wise. You want to solely</p> <p>10 put one offering on it, make sure it's stable, and</p> <p>11 then move your -- move the other offerings onto that</p> <p>12 platform, because it's a new platform.</p> <p>13 And so the -- this whole area is about a</p> <p>14 discussion of moving off of the old platform and</p> <p>15 creating a new platform and what's the best</p> <p>16 mechanism to do that to make sure that it -- there's</p> <p>17 no interruptions in service with our current</p> <p>18 providers -- or current lenders.</p> <p>19 Q. Right. But the only product that would</p> <p>20 reside on the new platform would be RISE?</p> <p>21 A. No, that's not what I was stating here.</p> <p>22 Q. Okay.</p> <p>23 A. It was part of a -- you know, a strategy</p> <p>24 to -- to optimize and make sure that there's no</p> <p>25 interruption of -- of service for any of our</p>	<p style="text-align: right;">Page 163</p> <p>1 those that do need funds more frequently."</p> <p>2 And I just want to ask you, what's the</p> <p>3 source for the characterization -- characterization</p> <p>4 of the customer base for each of these products?</p> <p>5 Where does that come from?</p> <p>6 A. You know, I think this was more of a</p> <p>7 discussion item, so those were examples. I didn't</p> <p>8 utilize a source in order to come up with the</p> <p>9 examples. This is purely a brand exercise. And</p> <p>10 those were examples for discussions, and then</p> <p>11 eventually got pitched to the tribes of, you know,</p> <p>12 here's ideas for repositioning your brands as the</p> <p>13 marketing agent.</p> <p>14 Q. Okay. And what is it about the Great</p> <p>15 Plains product that made them -- the</p> <p>16 brand-of-a-second-chance sort of work, in your mind?</p> <p>17 A. I didn't say that -- that ended up coming</p> <p>18 to fruition. So. . .</p> <p>19 Q. I understand. But why would you even think</p> <p>20 it might?</p> <p>21 A. I think as I indicated before, Great Plains</p> <p>22 was a higher APR offering, and they were able to</p> <p>23 attract customers that might have had higher losses.</p> <p>24 Q. And is it fair to say that Mobiloans, for</p> <p>25 reasons we don't need to go into, was just able to</p>
<p style="text-align: right;">Page 162</p> <p>1 lenders.</p> <p>2 Q. Okay. And why is it that Mobiloans still</p> <p>3 needs to move? Why did they need to move?</p> <p>4 A. I think as I indicated before, they were</p> <p>5 utilizing CoreCard. CoreCard has some issues. It</p> <p>6 wasn't built internally, and we were not happy with</p> <p>7 CoreCard. And the -- that means that we would need</p> <p>8 to move them off of that platform onto the -- the</p> <p>9 concept would be Nortridge.</p> <p>10 Q. And do you know whether Mobiloans was moved</p> <p>11 off of CoreCard?</p> <p>12 A. I -- I didn't keep up with the technology,</p> <p>13 so I don't know the ones after I left.</p> <p>14 Q. Okay. And do you know whether enhancements</p> <p>15 were made to the legacy platform?</p> <p>16 A. Since I left in 2014?</p> <p>17 Q. No. I mean since the date of this</p> <p>18 document.</p> <p>19 A. Yes, I'm sure there were.</p> <p>20 Q. Okay. Take a look at 12. We're now</p> <p>21 talking about customer and product segmentation.</p> <p>22 "Do we tailor each product to that need?" And then</p> <p>23 it gives examples that, "Great Plains is for those</p> <p>24 that need a second chance. RISE for those that want</p> <p>25 to make their own comeback." And, "Mobiloans for</p>	<p style="text-align: right;">Page 164</p> <p>1 make funding decisions and get cash in people's</p> <p>2 pockets more quickly than the other products?</p> <p>3 MR. GATEWOOD: Objection; form.</p> <p>4 A. Mobiloans is a line of credit. And as a</p> <p>5 line of credit, it's a different -- it looks</p> <p>6 different. It's an open loan. It's an open loan</p> <p>7 credit, just like a -- we call it a card -- a credit</p> <p>8 card without the card. So you don't -- you always</p> <p>9 have funds just like your own credit card --</p> <p>10 BY MR. GROGAN:</p> <p>11 Q. So it gets --</p> <p>12 A. -- and you can utilize it.</p> <p>13 Q. People can get to it faster?</p> <p>14 A. It's -- it's not a closed loan --</p> <p>15 installment loan. It's different.</p> <p>16 Q. And "RISE for those who want to make their</p> <p>17 own comeback." What -- what were you thinking</p> <p>18 there?</p> <p>19 A. Oh. This is the infancy of RISE. I think</p> <p>20 it's really just tied to the brand, and concept of</p> <p>21 rocky and so forth.</p> <p>22 Q. But, again, you're seeing -- or at least</p> <p>23 this example makes -- seems to indicate that you're</p> <p>24 thinking of these products as serving different</p> <p>25 segments of the consumer market; is that correct?</p>

<p style="text-align: right;">Page 165</p> <p>1 MR. GATEWOOD: Objection; form.</p> <p>2 A. From what I recall, this was purposes of --</p> <p>3 for discussion items, and, you know, is there an</p> <p>4 opportunity to reposition the brands.</p> <p>5 BY MR. GROGAN:</p> <p>6 Q. But repositioning them at different</p> <p>7 segments of the -- of the market?</p> <p>8 MR. GATEWOOD: Same objection.</p> <p>9 A. Again, it's repositioning it, and then</p> <p>10 discussing these items with the tribes and get their</p> <p>11 feedback as a marketing agent.</p> <p>12 BY MR. GROGAN:</p> <p>13 Q. But repositioning them with regard to</p> <p>14 different segments of the consumer markets?</p> <p>15 MR. GATEWOOD: Objection; form.</p> <p>16 MR. SCHEFF: Object to the form.</p> <p>17 A. Again, it says "customer and product</p> <p>18 discussion item." And so this is -- these were --</p> <p>19 it's an ideation session. So it's repositioning it</p> <p>20 from a brand perspective, and different customers,</p> <p>21 if that makes sense to them, if it resonates to</p> <p>22 them. . .</p> <p>23 BY MR. GROGAN:</p> <p>24 Q. Okay. I understand these are just</p> <p>25 examples. Is -- is there any reason why Plain Green</p>	<p style="text-align: right;">Page 167</p> <p>1 again, for your patience.</p> <p>2 I want to introduce a new document for our</p> <p>3 discussion, and this is going to be Plaintiff's</p> <p>4 Exhibit 180. It's a very large exhibit. You may</p> <p>5 look at as much of it as you need to, but I will</p> <p>6 preface my remarks by saying that I have a question</p> <p>7 about what's on page 27, I think, is the only --</p> <p>8 only part of this document that I'm concerned with.</p> <p>9 (Exhibit No. P-180 marked.)</p> <p>10 MR. SCHEFF: I'm sorry, you said 27?</p> <p>11 MR. GROGAN: Page 27.</p> <p>12 MR. SCHEFF: What's the Bates on that?</p> <p>13 Because these don't appear to be numbered.</p> <p>14 MR. GROGAN: Hold on.</p> <p>15 MR. SCHEFF: Michelle, look at as much</p> <p>16 of this as you need to.</p> <p>17 Oh, I'm sorry.</p> <p>18 MR. GROGAN: Yeah, it's pretty clear.</p> <p>19 MR. SCHEFF: It is -- they have --</p> <p>20 they have numbers. Never mind. Got it.</p> <p>21 A. (Reviews document.)</p> <p>22 27? Is that right?</p> <p>23 BY MR. GROGAN:</p> <p>24 Q. Page 27, yes. The PowerPoint 27.</p> <p>25 Have you studied under Dean Smith,</p>
<p style="text-align: right;">Page 166</p> <p>1 is not characterized in some way here?</p> <p>2 A. I can't recall. I think these were just</p> <p>3 examples for discussion.</p> <p>4 Q. Okay. Thank you. If we could turn to</p> <p>5 Document D, please.</p> <p>6 MR. SCHEFF: John, we've been going</p> <p>7 about an hour and ten minutes.</p> <p>8 MR. GROGAN: What time is it?</p> <p>9 MR. SCHEFF: 12:35.</p> <p>10 MR. GROGAN: Are we having lunch</p> <p>11 provided, or. . .</p> <p>12 MR. SCHEFF: I guess. I don't know.</p> <p>13 Did you make any arrangements? Because I didn't.</p> <p>14 MR. GROGAN: No. This is an okay</p> <p>15 time. If people need lunch now, that's fine.</p> <p>16 MR. SCHEFF: Okay.</p> <p>17 THE VIDEOGRAPHER: Go off the record?</p> <p>18 MR. GROGAN: Yes.</p> <p>19 THE VIDEOGRAPHER: We are off the</p> <p>20 record at 12:34 p.m.</p> <p>21 (Break taken, 12:34 p.m. to 1:20 p.m.)</p> <p>22 THE VIDEOGRAPHER: We're back on the</p> <p>23 record. The time is 1:20 p.m.</p> <p>24 BY MR. GROGAN:</p> <p>25 Q. Welcome back, Ms. Nguyen. Thank you,</p>	<p style="text-align: right;">Page 168</p> <p>1 Ms. Nguyen? Never mind. Strike that. I'm sorry.</p> <p>2 I couldn't resist.</p> <p>3 Take a look at the first page. I'm sorry,</p> <p>4 I told you 27, but if you look at the cover of the</p> <p>5 document --</p> <p>6 A. This --</p> <p>7 Q. Not the e-mail transmittal, but the cover</p> <p>8 of the PowerPoint.</p> <p>9 A. Okay.</p> <p>10 Q. Do you recall this document?</p> <p>11 A. I recall the document.</p> <p>12 Q. All right. Are you the author of this</p> <p>13 document?</p> <p>14 A. I am author of the majority of this</p> <p>15 document.</p> <p>16 Q. Okay. Fine.</p> <p>17 And what was this document used for? Do</p> <p>18 you recall?</p> <p>19 A. I believe this was a meeting that we met</p> <p>20 with the council. I think we had indicated before</p> <p>21 that I speak to different tribal members every</p> <p>22 single day. We also had an opportunity to go out</p> <p>23 there, and we made it a point of at least meeting</p> <p>24 with each of the councils once a quarter. And so</p> <p>25 this is an example of meeting with the council as a</p>

1 A. That's correct.
 2 Q. And was -- from Think Finance's
 3 perspective, were you noticing that ACH providers
 4 were pulling away?
 5 A. Yes.
 6 Q. From working with the tribal products?
 7 A. I believe so at this time.
 8 Q. Okay. Mr. Rees says he's having --
 9 "hearing from VPC tomorrow." Why does VPC have a
 10 role to play here?
 11 MR. SCHEFF: Object to the form.
 12 A. I think we had discussed before, you know,
 13 as a service provider and -- and VPC and GPLS in
 14 terms of participating in the portfolios with the
 15 tribes, and so if there was concern from VPC in
 16 terms of participating in future portfolio, then the
 17 tribes would need to be aware of that as it pertains
 18 to their growth.
 19 BY MR. GROGAN:
 20 Q. Did VPC take the position that they were no
 21 longer going to purchase participations in the -- in
 22 the tribal products at this time?
 23 MR. SHAPIRO: Object to form.
 24 A. I think when I read through this, there
 25 was -- the -- the loan volume continued to remain

1 on. So from what I recall, there wasn't. . .
 2 BY MR. GROGAN:
 3 Q. Well, let's look at that. If you move
 4 forward in the exchange, on October 3rd, you write,
 5 "No new loans for tribal. Former loans can remain
 6 on. Refi/draws remain on. No marketing to formers
 7 or news. We still need to communicate to the
 8 tribes, but please begin the process. Let us know
 9 if you have any questions."
 10 What are you informing people of there?
 11 A. At this time, in -- on October 3rd,
 12 recent -- recent decisions that, as you -- we can
 13 see later have changed, but at that time, it -- it
 14 looked like former loans can remain for the three
 15 tribal entities.
 16 Q. Who's making these decisions?
 17 MR. SHAPIRO: Form.
 18 A. This -- from what I recall, it was
 19 conversations that we were having back and forth
 20 with VPC, as well as the tribes, in terms of the
 21 impact and negotiations. That's why they continued
 22 to change.
 23 BY MR. GROGAN:
 24 Q. And it was a fluid situation?
 25 A. Absolutely.

1 Q. And -- and it was depending on your
 2 conversations with VPC?
 3 MR. SHAPIRO: Objection to form and
 4 inconsistent with her testimony.
 5 A. Yeah, as I mentioned before, it was, you
 6 know, internal discussions with VPC, GPLS, as well
 7 as the tribes, and ongoing negotiations of what the
 8 impact is to --
 9 BY MR. GROGAN:
 10 Q. Okay. So it says -- let's skip to the
 11 beginning -- I'm sorry, the first page of the
 12 exhibit. The bottom -- you're writing now, the next
 13 day, October 4th, "All: Good news for MBL. We are
 14 working with VPC to keep MBL new customer volume on,
 15 in addition to formers. As long as marketing
 16 remains off, organic traffic okay. So that means we
 17 leave as is. We still need the firm okay from VPC,
 18 so hold tight, and we'll keep you posted."
 19 Do you recall that?
 20 A. Yes.
 21 Q. Okay. What is it that VPC is going to okay
 22 that you're waiting for?
 23 A. From what I recall, is the ongoing intent
 24 to participate in the portfolio.
 25 Q. Through purchases by GPLS?

1 A. They were going to participate with the
 2 Mobiloans portfolio via GPLS.
 3 Q. Okay. And what would have been the effect
 4 on tribal -- on the three tribal products had VPC
 5 determined that GPLS was not going to participate?
 6 MR. SHAPIRO: Objection; calls for
 7 speculation.
 8 A. You know, I think that would depend on the
 9 tribes and what they needed to do in terms of the
 10 next steps.
 11 BY MR. GROGAN:
 12 Q. And yet in anticipation of that, you were
 13 ready to turn off all marketing for new loans; is
 14 that correct?
 15 A. You know, as a platform provider,
 16 everything is -- we're always ready to make quick
 17 changes, but nothing would occur until we have
 18 the -- the approval of the tribe.
 19 Q. I understand that. But it's -- on
 20 October 3rd, you're believing that the position will
 21 be "no new loans for tribal." And does that mean
 22 for all three tribal products?
 23 A. At this -- on October 3rd, at this time
 24 period, "no new loans for tribal" would be for all
 25 three tribes.

1 Q. If VPC decided that GPLS was not going to
2 participate and buy participations in tribal
3 products?
4 MR. SHAPIRO: Object to form.
5 A. The way -- and, again, this is all
6 shorthand. I was trying to communicate that there's
7 a possibility of no new loans for the tribes. If
8 GPLS didn't participate and if the -- the tribes
9 were not able to find -- or if they wanted to
10 continue on or find another funding source.
11 BY MR. GROGAN:
12 Q. Okay. But it was VPC that was going to
13 make that decision for GPLS?
14 MR. SHAPIRO: Objection; form.
15 A. Which -- sorry.
16 BY MR. GROGAN:
17 Q. Well, it's VPC that you're waiting to hear
18 from on -- on how this is going to turn out; isn't
19 that correct?
20 A. Only as it pertains to the participation,
21 if they were going to continue participation in the
22 portfolio, not as it pertains to whether or not the
23 tribes would continue to provide new -- more loans.
24 Q. I see. Are you aware that the tribes had
25 the wherewithal to provide loans without GPLS?

1 A. In 2013?
2 Q. Yeah.
3 A. I was not part of each of the tribes, and I
4 don't understand their budgets. So they possibly
5 could have.
6 Q. Okay. But you were prepared to order, on
7 October 3rd, that there be no new tribal loans; is
8 that correct?
9 A. Worst case scenario, trying to line
10 everybody up in a large organization.
11 Q. Okay. And as it worked out, at least at
12 this particular juncture --
13 A. I did say please -- you know, please pause --
14 start the process, but we still need to have
15 discussions with the tribes.
16 Q. Okay. And as it worked out, you're writing
17 on October 4th to a large group of people, "Okay.
18 We are all good to go -- we are good to go with all
19 tribal as follows: New loan volume, leave on. No
20 active marketing." Is that -- did I read that
21 right?
22 A. Yes.
23 Q. "Former loan volume, leave on. No active
24 marketing."
25 A. Yes.

1 Q. Okay. Why are you suspending marketing?
2 A. What I recall from the discussions with all
3 the parties was, let's continue to leave the volume
4 on as we assess what's happening with the operation
5 checkpoint and not -- not perform active marketing,
6 but allow customers to naturally find their way to
7 the -- the different portfolios.
8 Q. Okay. And I should have asked this
9 earlier, but earlier on the 4th, at 1:00, you are
10 reporting, "Good news for MBL." In the other parts
11 of the e-mail, you're talking about "all tribal,"
12 but why are you singling out MBL here?
13 A. From what I recall, this was a very fluid
14 process, and so as I got new news, I was sharing it
15 with a larger team. And so in this example, it was
16 an update as it pertains to Mobiloans.
17 Q. It says, "We are working with VPC to keep
18 MBL new customer volume on."
19 At that point, were you working with VPC
20 to keep Plain Green and Great Plains Lending on too,
21 or just MBL?
22 A. Oh. All three.
23 Q. Okay. Yeah, why was the ACH service so
24 critical to the model that you -- that if you had
25 lost it, you wouldn't -- you would consider not --

1 not lending anymore?
2 MR. GATEWOOD: Objection; form.
3 MR. SCHEFF: Object to the form.
4 A. The services we provide is an online
5 service with -- the premise is to deposit your funds
6 the next business day via ACH. And so if there's
7 not an ACH provider, you cannot deposit the funds
8 into the consumer's account the next business day as
9 communicated to the customers, Part 1.
10 Part 2 is, you know, we offer the ability
11 for consumers to pay back via ACH, and that would
12 not exist if there's not an ACH provider.
13 BY MR. GROGAN:
14 Q. What percentage of consumers used ACH as
15 the means to pay back?
16 A. What product? What time period? I . . .
17 Q. Okay. Let's -- Great Plains.
18 A. I -- you know, ACH occurs multiple ways.
19 It's recurring ACH. They can call in and make a
20 one-time payment via ACH. There is also debit card
21 payments, as well as sending in paper checks, money
22 orders.
23 Q. Right. My question was, what percentage,
24 if you know, of consumers of, say, Plain Green used
25 the ACH process?

<p style="text-align: right;">Page 261</p> <p>1 A. For purposes of funding or payments?</p> <p>2 Q. Payments.</p> <p>3 A. You know, it's been so long, I don't have</p> <p>4 the -- the numbers in each of them. 2013, I can't --</p> <p>5 Q. Okay. But --</p> <p>6 A. -- recall.</p> <p>7 Q. -- did most of them use that, or was that a</p> <p>8 fairly rare way?</p> <p>9 MR. SCHEFF: Object to the form.</p> <p>10 A. From what I recall, a number of customers</p> <p>11 utilized ACH.</p> <p>12 MR. GROGAN: Okay. All right. Can we</p> <p>13 go to document Y?</p> <p>14 This will be Plaintiff's Exhibit 190.</p> <p>15 (Exhibit No. P-190 marked.)</p> <p>16 A. (Reviews document.)</p> <p>17 BY MR. GROGAN:</p> <p>18 Q. All set?</p> <p>19 A. Yes.</p> <p>20 Q. Good. Do you recognize this e-mail</p> <p>21 exchange?</p> <p>22 A. Yes.</p> <p>23 Q. Okay. Let's start again at the back, if</p> <p>24 you could. As I read it, this starts with an e-mail</p> <p>25 from Tom Welch to Mr. Lutes, in which he states that</p>	<p style="text-align: right;">Page 263</p> <p>1 A. I believe that was the -- the firm.</p> <p>2 Q. Which firm?</p> <p>3 A. Law firm for VPC.</p> <p>4 Q. For VPC?</p> <p>5 MR. SHAPIRO: Objection; form and</p> <p>6 foundation.</p> <p>7 BY MR. GROGAN:</p> <p>8 Q. Okay. On the front page, there's another</p> <p>9 e-mail from Mr. Lutes to Mr. Welch, and you're CC'd,</p> <p>10 which includes an e-mail from Mr. Welch back to</p> <p>11 Mr. -- I'm not sure who Mr. Welch is writing to.</p> <p>12 But he said, "I spoke with Chris and Ken this a m.</p> <p>13 We are shooting for and all-hands call next</p> <p>14 Wednesday to walk through the proposed changes. I</p> <p>15 will circulate potential times tomorrow/early next</p> <p>16 week."</p> <p>17 My question is, if you know, what are the</p> <p>18 changes that they're talking about?</p> <p>19 A. Oh, I don't -- I don't know.</p> <p>20 Q. Okay. And then it says -- above that,</p> <p>21 Mr. Lutes writes to Mr. Welch, CC'ing you, "Sarah,</p> <p>22 the call will" -- and also Ms. Cutrona, "Sarah, the</p> <p>23 call will exclude Rick Eckman. Just VPC, Katten,</p> <p>24 John Williams, Claudia, and us."</p> <p>25 Who's Rick Eckman?</p>
<p style="text-align: right;">Page 262</p> <p>1 Mr. Williams, a John Williams, "would like to take a</p> <p>2 look at the latest and greatest consumer loan</p> <p>3 agreements for all three tribes."</p> <p>4 Do you know who John Williams was?</p> <p>5 A. I believe he was an attorney.</p> <p>6 Q. Working for whom?</p> <p>7 A. I believe he was working for VPC.</p> <p>8 Q. Okay. And the next e-mail is from you to</p> <p>9 Mr. Lutes and Mr. Welch, attaching consumer loan</p> <p>10 agreements. Did Mr. Lutes ask you to obtain those</p> <p>11 for Mr. Welch?</p> <p>12 A. Yes.</p> <p>13 Q. Okay. And then if you turn to the next</p> <p>14 page going forward, there's a letter -- there's an</p> <p>15 e-mail from Sarah Fagin Cutrona to Tom Welch, in</p> <p>16 which you were copied. And what she's asking, "Tom,</p> <p>17 any benefit for us to walk through the term sheet or</p> <p>18 a need for a joint call with Katten DC and Katten</p> <p>19 Chicago early next week?"</p> <p>20 Do you understand what that's about?</p> <p>21 A. I believe this was part of -- to</p> <p>22 renegotiate with the tribes.</p> <p>23 Q. This is May 2013. And there's a discussion</p> <p>24 on which -- Katten DC and Katten Chicago. Who's</p> <p>25 Katten?</p>	<p style="text-align: right;">Page 264</p> <p>1 A. Rick Eckman is the attorney for Plain</p> <p>2 Green.</p> <p>3 Q. For Plain Green. Is he the attorney for</p> <p>4 anybody else?</p> <p>5 A. 2013. I don't think so.</p> <p>6 Q. Okay. And we know who Mr. Williams is. Do</p> <p>7 you know who Claudia is?</p> <p>8 A. Claudia is an attorney, I believe, with</p> <p>9 Katten.</p> <p>10 Q. Okay. And who is Claudia working for?</p> <p>11 MR. SHAPIRO: Objection to the form.</p> <p>12 A. I believe Claudia was working with Katten.</p> <p>13 BY MR. GROGAN:</p> <p>14 Q. Okay. And -- for VPC?</p> <p>15 MR. SHAPIRO: Objection; form.</p> <p>16 BY MR. GROGAN:</p> <p>17 Q. Or for some other party? If you know.</p> <p>18 A. I can't recall.</p> <p>19 Q. Okay. And do you have any idea why they</p> <p>20 want to exclude Mr. Eckman from the call?</p> <p>21 MR. GATEWOOD: Objection; form.</p> <p>22 A. No.</p> <p>23 BY MR. GROGAN:</p> <p>24 Q. Mr. Eckman, you said that in 2013, he was</p> <p>25 representing Plain Green, to the best of your</p>

<p style="text-align: right;">Page 1</p> <p style="text-align: center;">IN THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF PENNSYLVANIA</p> <p>COMMONWEALTH OF PENNSYLVANIA * by Attorney General JOSH * SHAPIRO, * Plaintiff, *</p> <p>VS. * Civil Action * No. 14-7139-JCJ</p> <p>THINK FINANCE, INC., et al., * Defendants. *</p> <p>*****</p> <p style="text-align: center;">ORAL AND VIDEOTAPED DEPOSITION OF NEAL HUMPHREY MARCH 8, 2018</p> <p>*****</p> <p>DEPOSITION of NEAL HUMPHREY, produced as a witness at the instance of the Plaintiff, and duly sworn, was taken in the above-styled and numbered cause on the 8th day of March, 2018, from 3:27 a.m. to 6:03 p.m., before Christy R. Sievert, CSR, RPR, in and for the State of Texas, reported by machine shorthand, at the offices of Hunton & Williams, LLP, 1445 Ross Avenue, Suite 3700, Dallas, Texas 75202, pursuant to the Federal Rules of Civil Procedure and the provisions stated on the record or attached hereto.</p>	<p style="text-align: right;">Page 3</p> <p style="text-align: center;">A P P E A R A N C E S (continued)</p> <p>COUNSEL FOR KENNETH REES:</p> <p>MR. RICHARD L. SCHEFF Montgomery, McCracken, Walker & Rhoads, LLP 123 South Broad Street Philadelphia, Pennsylvania 19109 Phone: 215-772-7502 E-mail: rscheff@mmwr.com</p> <p>ALSO PRESENT:</p> <p>GUS PHILLIPS, Videographer KEVIN BYERS TOM GRABER SAVERIO "SAM" MIRARCHI, (Appearing Telephonically)</p>
<p style="text-align: right;">Page 2</p> <p style="text-align: center;">A P P E A R A N C E S</p> <p>COUNSEL FOR THE COMMONWEALTH OF PENNSYLVANIA:</p> <p>MR IRV ACKELSBURG MR JOHN J GROGAN Langer, Grogan & Diver, PC 1717 Arch Street, Suite 4130 Philadelphia, Pennsylvania 19103 Phone: 215-320-5701 E-mail: iackelsberg@langergrogan.com jgrogan@langergrogan.com</p> <p>COUNSEL FOR THINK FINANCE, INC : MR MATTHEW S SHELTON Goodwin Procter, LLP 901 New York Avenue, NW Washington, D C 20001 Phone: 202-346-4000 E-mail: msheldon@goodwinprocter.com</p> <p>COUNSEL FOR VICTORY PARK CAPITAL: MR DANIEL P SHAPIRO Katten Muchin Rosenman, LLP 525 W Monroe Street Chicago, Illinois 60661 Phone: 312-902-5622 E-mail: daniel.shapiro@kattenlaw.com</p> <p>COUNSEL FOR NATIONAL CREDIT ADJUSTERS: MS FRANCES B MORRIS Van Ness Feldman, LLP 1050 Thomas Jefferson Street, NW Seventh Floor Washington, D C Phone: 202-298-1874 E-mail: ffb@vnf.com</p>	<p style="text-align: right;">Page 4</p> <p style="text-align: center;">I N D E X</p> <p style="text-align: right;">PAGE</p> <p>Appearances..... 2-3</p> <p>Exhibits..... 5</p> <p>Proceedings..... 6</p> <p>NEAL HUMPHREY:</p> <p>Examination by Mr. Ackelsberg..... 7</p> <p>Changes and Signature..... 128-129</p> <p>Reporter's Certification..... 130-131</p>

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<p>1 EXHIBITS</p> <p>2 NUMBER DESCRIPTION PAGE</p> <p>3 Exhibit 54 Mobiloans Business Rules 69</p> <p>TF-PA009885 - 009937</p> <p>4 Exhibits 55 & 56 (Not identified or marked)</p> <p>5 Exhibit 57 The Product Team Product 78</p> <p>6 Descriptions Measures of</p> <p>7 Success Department Structure</p> <p>8 Values in Action</p> <p>TF-PA185445 - 185471</p> <p>9 Exhibit 58 E-mail correspondence, 11-25-14 92</p> <p>Re: MBL - No State PA</p> <p>TF-PA626072 - 626074</p> <p>10 Exhibit 59 E-mail correspondence, 10-17-14 96</p> <p>11 Re: Fw: Pending SOPs</p> <p>TF-PA036495 - 036499</p> <p>12 Exhibit 60 Mobiloans Standard Operating 99</p> <p>13 Procedure #200-30 Daily Review</p> <p>14 of Proposed Applications For</p> <p>15 Funding</p> <p>TF-PA011757 - 011759</p> <p>16 Exhibit 61 E-mail correspondence, 11-5-14 106</p> <p>17 Re: Pending SOPs</p> <p>TF-PA021010 - 021016</p> <p>18 Exhibit 62 E-mail correspondence, 6-25-15 120</p> <p>19 Re: Fw: MBL Daily Review of</p> <p>20 Requests for Funding SOP (d)</p> <p>21 Exhibit 63 E-mail disclaimers/Footers 123</p> <p>22 TF-PA048240</p> <p>23 Exhibit 64 2-4-17 letter to M Pierite 126</p> <p>24 from C Brown, Re: Sovereign</p> <p>25 Regulatory Authority</p> <p>TF-PA598989 - 599006</p>	<p>1 MR. SHELDON: Matt Sheldon for Think</p> <p>2 Finance, LLC, joined by Tom Graber of Think Finance,</p> <p>3 LLC.</p> <p>4 MR. ACKELSBURG: And we also have on</p> <p>5 the phone Saverio Mirarchi, a deputy attorney</p> <p>6 general, from Pennsylvania.</p> <p>7 THE VIDEOGRAPHER: Would the court</p> <p>8 reporter please administer the oath.</p> <p>9 NEAL HUMPHREY</p> <p>10 having been first duly sworn,</p> <p>11 testified as follows:</p> <p>12 EXAMINATION</p> <p>13 BY MR. ACKELSBURG:</p> <p>14 Q. Mr. Humphrey, pleased to meet you. My name</p> <p>15 is Irv Ackelsberg, as I just said. And I, along</p> <p>16 with my colleague, Mr. Grogan on my -- on my left,</p> <p>17 we are representing the Commonwealth of Pennsylvania</p> <p>18 in an action against Think Finance, against Ken</p> <p>19 Rees, and against Victory Park Capital, and National</p> <p>20 Credit Adjusters concerning certain loan programs,</p> <p>21 including a program called "Mobiloans." And that's</p> <p>22 a program you're familiar with, right?</p> <p>23 A. Yes.</p> <p>24 Q. Okay. So first off, I need to ask you a</p> <p>25 few just preliminaries. Have you ever been deposed</p>
Page 6	Page 8
<p>1 PROCEEDINGS</p> <p>2 THE VIDEOGRAPHER: We are now on the</p> <p>3 record for the video deposition of Neal Humphrey.</p> <p>4 The time is 3:27 p m., March 8, 2018, in the matter</p> <p>5 of Commonwealth of Pennsylvania, et al., vs. Think</p> <p>6 Finance, Incorporated, et al., Civil Action</p> <p>7 No. 17-7139-JCJ, being held in the United States</p> <p>8 District Court for the Eastern District of</p> <p>9 Pennsylvania.</p> <p>10 The court reporter is Christy Sievert.</p> <p>11 The videographer is Gus Phillips. Both are</p> <p>12 representatives of Kaplan, Leaman & Wolfe Court</p> <p>13 Reporting.</p> <p>14 Will counsel please state their</p> <p>15 appearances for the record.</p> <p>16 MR. ACKELSBURG: Irv Ackelsberg,</p> <p>17 special counsel for Pennsylvania Attorney General.</p> <p>18 MR. GROGAN: John Grogan, special</p> <p>19 counsel for the Pennsylvania Attorney General.</p> <p>20 MS. MORRIS: Frances Morris for</p> <p>21 National Credit Adjusters.</p> <p>22 MR. SHAPIRO: Dan Shapiro for the</p> <p>23 Victory Park defendants.</p> <p>24 MR. SCHEFF: Richard Scheff for</p> <p>25 Kenneth Rees.</p>	<p>1 before?</p> <p>2 A. No.</p> <p>3 Q. Okay. So I know that -- I'm confident that</p> <p>4 your lawyers have explained to you something about</p> <p>5 the process, but I have to do it again just to be</p> <p>6 sure that you understand what's happening here.</p> <p>7 I'm going to ask you -- this, basically,</p> <p>8 works as a question-and-answer protocol. I ask you</p> <p>9 a question, you -- you provide an answer. Both the</p> <p>10 question and the answer is being transcribed by the</p> <p>11 court reporter here. Do you understand?</p> <p>12 A. Yeah.</p> <p>13 Q. Okay. Even though it's being videotaped,</p> <p>14 the official record is what is happening to your</p> <p>15 left, your immediate left with the court reporter.</p> <p>16 She's going to prepare that transcript. So because</p> <p>17 it's a transcript and not a movie, we -- we can't</p> <p>18 deal with nonverbals. So you -- a nod of the head,</p> <p>19 while it would work on the video, isn't going to</p> <p>20 work here. So we really do need you to provide</p> <p>21 verbal answers. You have to speak up so she can</p> <p>22 hear you.</p> <p>23 And you understand that after this is all</p> <p>24 over, there will be a transcript of everything that</p> <p>25 happened here, everything that was said, and that it</p>

<p style="text-align: right;">Page 33</p> <p>1 center, listen to phone calls that are coming in</p> <p>2 about Mobiloans. I mean, the whole point of is it</p> <p>3 to help improve the software product. So hearing</p> <p>4 what customers are saying on the phone coming in</p> <p>5 helps us do it. It also helps to have a development</p> <p>6 person there who can hear the issues directly</p> <p>7 themselves.</p> <p>8 Q. And when you say -- when you use the term</p> <p>9 "development person," you're talking about an IT</p> <p>10 person, right?</p> <p>11 A. Correct.</p> <p>12 Q. Someone who, if an adjustment needs to be</p> <p>13 made in the software, can -- can work on that?</p> <p>14 A. Yes. He was responsible. He wouldn't do</p> <p>15 it himself.</p> <p>16 Q. Yeah, yeah, no, I understand that.</p> <p>17 Now, before -- so you started in August,</p> <p>18 and then in November was your first trip to</p> <p>19 Louisiana, right?</p> <p>20 A. Yes.</p> <p>21 Q. Okay. Well, let's -- let's get in all the</p> <p>22 trips to Louisiana first. Like, when was the second</p> <p>23 trip to Louisiana?</p> <p>24 A. I don't recall. I want to say it was maybe</p> <p>25 a year later or so.</p>	<p style="text-align: right;">Page 35</p> <p>1 for Mobiloans at vendors --</p> <p>2 A. Yes.</p> <p>3 Q. -- right?</p> <p>4 Okay. So one of those vendors was</p> <p>5 MetaSource, right?</p> <p>6 A. Yes.</p> <p>7 Q. And MetaSource had some seats dedicated to</p> <p>8 Mobiloans, correct?</p> <p>9 A. Yes.</p> <p>10 Q. How many?</p> <p>11 A. I don't know.</p> <p>12 Q. More than 12, right?</p> <p>13 A. I don't know.</p> <p>14 Q. You had -- did you ever go to MetaSource to</p> <p>15 look?</p> <p>16 A. No.</p> <p>17 Q. Why?</p> <p>18 A. MetaSource was an overflow call center. So</p> <p>19 if the -- if the call center on the tribe -- at the</p> <p>20 tribe was too busy, those calls would overflow to</p> <p>21 Meta.</p> <p>22 Q. Okay. And what kind of calls are we</p> <p>23 talking about?</p> <p>24 A. Customer service calls, technical support,</p> <p>25 things like that.</p>
<p style="text-align: right;">Page 34</p> <p>1 Q. And did you bring a development director</p> <p>2 again?</p> <p>3 A. No, I brought our marketing director.</p> <p>4 Q. And why did you bring the marketing</p> <p>5 director?</p> <p>6 A. Similar reason, to hear -- to see the</p> <p>7 operation there, to meet the client, to listen to</p> <p>8 calls. That's really where you learn most about</p> <p>9 what's happening with the product and what customers</p> <p>10 are saying about it and what feedback is coming back</p> <p>11 and what issues we have and. . .</p> <p>12 Q. Now, my understanding is that -- well, why</p> <p>13 don't you just ask -- tell me, the -- so there was a</p> <p>14 call center -- or there is a call center actually on</p> <p>15 tribal land, right?</p> <p>16 A. Yes.</p> <p>17 Q. Okay. And about how many seats? How many</p> <p>18 people are answering the phones there?</p> <p>19 A. Currently or then?</p> <p>20 Q. Why don't you give me both. We'll start</p> <p>21 with -- start with now and then then.</p> <p>22 A. Now, I don't know. But then, it was</p> <p>23 probably 12 or 15.</p> <p>24 Q. Okay. Now, my understanding is that</p> <p>25 there's also call center work done -- that was done</p>	<p style="text-align: right;">Page 36</p> <p>1 Q. So there is -- my understanding is that</p> <p>2 there is something called "verification." Right?</p> <p>3 MR. SHELDON: Object to form.</p> <p>4 BY MR. ACKELSBURG:</p> <p>5 Q. You know about verification, right? You</p> <p>6 know there is such a function?</p> <p>7 A. Yes.</p> <p>8 Q. And that's not what you're talking about,</p> <p>9 right? Or is it what you're talking about?</p> <p>10 A. No.</p> <p>11 Q. Okay. So let's just start with</p> <p>12 verification. Verification has to do with the loan</p> <p>13 application procedure, right?</p> <p>14 A. Yes.</p> <p>15 Q. So if sometimes someone -- sometimes when a</p> <p>16 customer would go online and apply for Mobiloans,</p> <p>17 they would be approved right away, right?</p> <p>18 A. Sometimes that would happen, yes.</p> <p>19 Q. Yeah, and it -- and if they met the -- if</p> <p>20 the software determined that the risk was -- was</p> <p>21 good, to -- it could make an approval almost</p> <p>22 simultaneously, right?</p> <p>23 MR. SHELDON: Object to form.</p> <p>24 A. That -- that could happen, yes.</p> <p>25 BY MR. ACKELSBURG:</p>

<p style="text-align: right;">Page 37</p> <p>1 Q. Yeah. But sometimes, instead of an 2 approval, there would be a request for additional 3 information, right? 4 A. Yes. 5 Q. Okay. And in that case, the customer would 6 be directed to call somewhere to provide 7 information, right? 8 A. They weren't directed to call, necessarily. 9 They were directed to e-mail or fax in documents. 10 Q. Okay. And if they were e-mailing -- 11 e-mailing or faxing documents, where would those 12 documents go to? 13 A. The call center agents would take some of 14 those. 15 Q. The call center agents in Louisiana? 16 A. Yes. 17 Q. Okay. And the overflow go to MetaSource? 18 A. I don't -- 19 Q. Is MetaSource involved in verification? 20 A. I don't know. 21 Q. Okay. Well, you were the product manager. 22 Who would know that? 23 A. That would be our -- I think our operations 24 people. Or, actually, the -- in that case, the -- 25 our risk folks, they manage that verification</p>	<p style="text-align: right;">Page 39</p> <p>1 would happen, right? 2 MR. SHELDON: Object to form. 3 A. That's not my area of expertise, the 4 collections process. 5 BY MR. ACKELSBURG: 6 Q. So as product manager, you didn't -- you 7 didn't -- 8 A. I wasn't responsible for the collections 9 process. 10 Q. Who was? 11 A. We have a collections manager that manages 12 that. 13 Q. Who is that -- who was that in November of 14 2014? 15 A. I believe it was Kevin Banks. 16 Q. Okay. And so you didn't have anything to 17 do with -- with the vendors, the collection vendors? 18 You don't -- 19 A. No. 20 Q. No. Okay. Well, why don't you describe 21 who your primary responsibilities were as -- as the 22 product manager since I -- since I'm taking you into 23 areas that were not your responsibility, why don't 24 you tell me what your responsibilities, in fact, 25 were.</p>
<p style="text-align: right;">Page 38</p> <p>1 process. 2 Q. Okay. Now, the website also had a phone 3 number, so that if a customer -- an existing 4 customer wanted to call, let's say, had an issue 5 with a payment, there was a number they could call, 6 right? 7 A. Yes. 8 Q. And if they called that number, would the 9 number ring at the tribe, or would it first ring, 10 like, in Texas or somewhere else and then get routed 11 to the tribe? 12 A. No, it would ring directly to the -- to the 13 tribe. 14 Q. To the tribe. Okay. And that -- and that 15 if there was overflow, it would automatically bounce 16 to MetaSource; is that how -- 17 A. That was my understanding. 18 Q. Okay. Now, in addition to verification, 19 there is -- there, also, are collection calls that 20 are -- like, if someone -- why don't you tell me 21 what happens when someone goes delinquent. 22 MR. SHELDON: Object to form. 23 BY MR. ACKELSBURG: 24 Q. In terms of contact, like, they'd get a 25 call, right? Or an e-mail or a call or something</p>	<p style="text-align: right;">Page 40</p> <p>1 A. Yeah, my responsibilities were to work with 2 our client. There's a client relations aspect of 3 that job. So working with the client on software 4 enhancements, new features to the software, fixing 5 bugs to the software, things like that. Is that 6 enough information? 7 Q. Yeah, I think so. It also sort of matches 8 your background, which was in -- which is, to some 9 extent, in the software area, right? 10 A. Yes. Before the family business, it was, 11 yeah. 12 Q. Yes. In the course of your -- so you're 13 hired in August of -- of 2014. You don't go to the 14 tribe until November. Had you had any interactions 15 with the tribe between August and November? 16 A. Yes. 17 Q. Okay. That was on the telephone? 18 A. Yes. 19 Q. Okay. And who were the people that you 20 were inter- -- interacting with at Mobiloans? 21 A. Generally, it was Kim Palermo. 22 Q. My understanding is she was -- her title 23 was compliance chief or compliance officer. Or 24 something about compliance, right? 25 A. That was my understanding as well.</p>

<p style="text-align: right;">Page 1</p> <p style="text-align: center;">IN THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF PENNSYLVANIA</p> <p style="text-align: center;">- - -</p> <p>COMMONWEALTH OF : PENNSYLVANIA : Plaintiff : : VS. : CIVIL ACTION NUMBER : 2:14-CV-07139 THINK FINANCE, INC., : ET AL., : Defendants : - - -</p> <p style="text-align: center;">OCTOBER 23, 2018</p> <p style="text-align: center;">- - -</p> <p>Videotaped deposition of SARAH CUTRONA, was taken pursuant to notice at 1600 Arch Street, Suite 300, Philadelphia, Pennsylvania, beginning at or about 8:00 a.m. before Jeannine Cancelliere, Court Reporter and Notary Public and Scott Dantzer, Videotape Operator, there being present.</p> <p style="text-align: center;">KAPLAN, LEAMAN AND WOLFE Registered Professional Reporters 230 S. Broad Street, Suite 1303 Philadelphia, Pennsylvania 19102 (215) 922-7112</p>	<p style="text-align: right;">Page 3</p> <p>1 APPEARANCES CONTINUED 2 3 GOODWIN PROCTER BY: MATTHEW SHELDON, ESQUIRE 901 New York Avenue, NW Washington, D.C. 20001 Phone: (202) 346-4000 Representing Think Finance msheldon@goodwinlaw.com 6 7 8 VAN NESS FELDMAN BY: KETURAH BROWN, ESQUIRE 1050 Thomas Jefferson Street, NW Washington, D.C. 20007-3877 Phone: (202) 298-1800 Representing National Credit Adjusters LLC kab@vnf.com (Via Telephone) 12 13 14 15 16 17 18 19 20 21 22 23 24</p>
<p style="text-align: right;">Page 2</p> <p>1 APPEARANCES: 2 3 LANGER, GROGAN & DIVER, P C BY: IRV ACKELSBURG, ESQUIRE 1717 Arch Street, Suite 4130 Philadelphia, Pennsylvania 19103 Phone: (215) 320-5701 Representing the Plaintiff iackelsberg@langergrogan.com Also Present: David Nagdeman 7 8 ARMSTRONG TEASDALE BY: RICHARD SCHEFF, ESQUIRE 1500 Market Street, 12th Floor Philadelphia, Pennsylvania 19102 Phone: (215) 246-3478 Representing Sarah Cutrona rscheff@armstrongteasdale.com 12 13 ARMSTRONG TEASDALE BY: DAVID HERMAN, ESQUIRE 1500 Market Street, 12th Floor Philadelphia, Pennsylvania 19102 Phone: (215) 246-3478 Representing Ken Rees dherman@armstrongteasdale.com 16 17 KATTEN, MUCHIN, ROSENMAN LLP BY: J MATTHEW HAWS, ESQUIRE 525 W Monroe Street Chicago, Illinois 60661-3693 Phone: (312) 902-5319 Representing Victory Park matthew.haws@kattenlaw.com 22 23 24</p>	<p style="text-align: right;">Page 4</p> <p>1 - - - 2 I N D E X 3 - - - 4 SARAH CUTRONA PAGE 5 BY MR. ACKELSBURG 7 6 7 8 - - - 9 E X H I B I T S 10 - - - 11 EXHIBIT NO. PAGE 12 P-394 24 13 P-395 42 14 P-396 54 15 P-397 64 16 P-398 64 17 P-399 66 18 P-400 68 19 P-401 126 20 P-402 129 21 P-403 133 22 P-404 134 23 P-405 136 24 P-406 145</p>

<p style="text-align: right;">Page 5</p> <p>1 - - -</p> <p>2 E X H I B I T S</p> <p>3 - - -</p> <p>4 EXHIBIT NO. PAGE</p> <p>5 P-407 185</p> <p>6 P-408 192</p> <p>7 P-409 200</p> <p>8 P-410 200</p> <p>9 P-411 202</p> <p>10 P-412 205</p> <p>11 P-413 218</p> <p>12 P-414 219</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p>	<p style="text-align: right;">Page 7</p> <p>1 behalf of the Victory Park defendants.</p> <p>2 VIDEOTAPE OPERATOR: And the</p> <p>3 court reporter today is Jeannine Cancelliere.</p> <p>4 She'll now swear in the witness. We have</p> <p>5 somebody joining us on the telephone.</p> <p>6 MS. BROWN: Yes, Keturah Brown</p> <p>7 for NCA.</p> <p>8 - - -</p> <p>9 EXAMINATION</p> <p>10 - - -</p> <p>11 BY MR. ACKELSBERG:</p> <p>12 Q. Good morning, Ms. Cutrona.</p> <p>13 A. Good morning.</p> <p>14 Q. Could you state your current employer</p> <p>15 and position?</p> <p>16 A. Yes, I'm the chief legal officer at</p> <p>17 Elevate Credit, Inc.</p> <p>18 Q. Before that you were general counsel at</p> <p>19 Think Finance, before the spinoff, correct?</p> <p>20 A. That's correct.</p> <p>21 Q. I am just going to go quickly through</p> <p>22 some of your background. When did you</p> <p>23 graduate law school?</p> <p>24 A. 1990.</p>
<p style="text-align: right;">Page 6</p> <p>1 VIDEOTAPE OPERATOR: We're now</p> <p>2 on the record. My name is Scott Dantzer and</p> <p>3 I'm a videographer retained by On the Record.</p> <p>4 This is a video deposition for the United</p> <p>5 States District Court for the Eastern District</p> <p>6 of Pennsylvania. Today is October 23rd, 2018</p> <p>7 and it is 8:06 a.m. -- I'm sorry, 8:08 a.m.</p> <p>8 This deposition is being held at</p> <p>9 the Office of the Attorney General at 1600</p> <p>10 Arch Street in Philadelphia, Pennsylvania in</p> <p>11 the matter of the Commonwealth of Pennsylvania</p> <p>12 v. Think Finance, et al.</p> <p>13 The deponent today is Sarah</p> <p>14 Cutrona. Counsel, will you please state your</p> <p>15 appearances for the record?</p> <p>16 MR. ACKELSBERG: For the</p> <p>17 Commonwealth, Irv Ackelsberg.</p> <p>18 MR. SCHEFF: Richard Scheff for</p> <p>19 Sarah Cutrona.</p> <p>20 MR. SHELDON: Matthew Sheldon</p> <p>21 for the Think Finance defendants.</p> <p>22 MR. HERMAN: David Herman on</p> <p>23 behalf of Kenneth Rees.</p> <p>24 MR. HAWS: Matthew Haws on</p>	<p style="text-align: right;">Page 8</p> <p>1 Q. 1990?</p> <p>2 A. Yes.</p> <p>3 Q. I would like to just go through your</p> <p>4 employment history. Between law school and</p> <p>5 arriving at Think Finance -- first of all,</p> <p>6 when did you arrive at Think Finance?</p> <p>7 A. Well, the entity was called Payday One</p> <p>8 when I started, and that would have been in</p> <p>9 July of 2006.</p> <p>10 Q. And where did you -- what was your first</p> <p>11 job out of law school?</p> <p>12 A. I worked for Lynch Chappell & Alsup, a</p> <p>13 law firm in Midland, Texas.</p> <p>14 Q. How long were you there?</p> <p>15 A. For two years, a little over two years.</p> <p>16 Q. At some point you went in-house on</p> <p>17 various jobs?</p> <p>18 A. Correct.</p> <p>19 Q. What was your first in-house job?</p> <p>20 A. I went to work in government affairs at</p> <p>21 the Associates in Irving, Texas, which would</p> <p>22 have been in 1992, probably June of '92.</p> <p>23 Q. How long were you there?</p> <p>24 A. Until around October of '95, when I went</p>

<p style="text-align: right;">Page 25</p> <p>1 that came in discovery.</p> <p>2 A. So you're saying that 714 is the second</p> <p>3 page of the letter that starts on 712.</p> <p>4 Q. Yes, that's what it appears. It appears</p> <p>5 that in the copying there was an extra blank</p> <p>6 page added.</p> <p>7 A. Okay.</p> <p>8 Q. If you could re-clip it, we're going to</p> <p>9 have a lot of paper, just for paper management</p> <p>10 purposes.</p> <p>11 All right, so you see this</p> <p>12 was a complaint that was initiated from the</p> <p>13 State of New York from the attorney general</p> <p>14 there. Do you see that, that's how this</p> <p>15 started?</p> <p>16 A. Yes.</p> <p>17 Q. And the name of the consumer was Kevin</p> <p>18 Morelle, M-O-R-E-L-L-E, do you see that?</p> <p>19 A. Yes.</p> <p>20 Q. First of all, I want to just -- you</p> <p>21 probably know this, but just to make sure you</p> <p>22 understand, we got discovery from various</p> <p>23 defendants in the case. You'll note that the</p> <p>24 lower right-hand corner of these exhibits, it</p>	<p style="text-align: right;">Page 27</p> <p>1 Advisors. And Stephen Smith, who you</p> <p>2 mentioned earlier, who worked for me.</p> <p>3 Obviously they came to get</p> <p>4 this because they were included in this e-mail</p> <p>5 distribution.</p> <p>6 Q. Why is that, why was Victory Park</p> <p>7 getting -- was this standard? Was it standard</p> <p>8 that complaints from attorneys general be</p> <p>9 forwarded to Victory Park?</p> <p>10 MR. SCHEFF: Object to the</p> <p>11 form. You can answer.</p> <p>12 MR. HAWS: Objection.</p> <p>13 THE WITNESS: I think the</p> <p>14 contract -- I'm not sure, but I think that</p> <p>15 GPLS had asked to be notified of what we</p> <p>16 called escalated complaints, which would be</p> <p>17 attorney general complaints.</p> <p>18 BY MR. ACKELSBURG:</p> <p>19 Q. When you say GPLS, you're referring to</p> <p>20 the special purpose vehicle that was owned by</p> <p>21 Victory Park and purchased the participation</p> <p>22 interest; am I right?</p> <p>23</p> <p>24 MR. SCHEFF: Object to the</p>
<p style="text-align: right;">Page 26</p> <p>1 says GPLP and there's a number?</p> <p>2 A. Yes.</p> <p>3 Q. The GPLP indicates that we got this</p> <p>4 document from Victory Park, okay. Do you</p> <p>5 understand?</p> <p>6 A. Yes, I do.</p> <p>7 Q. I guess my first question is, why would</p> <p>8 Victory Park have these documents? If you</p> <p>9 could explain protocol that would end up --</p> <p>10 where Victory Park would end up with this</p> <p>11 complaint, I would appreciate it.</p> <p>12 A. Well, it looks like on the Tami Simpson</p> <p>13 e-mail, which is the cover page, she sent this</p> <p>14 to Billianne at Plain Green and Traci at Plain</p> <p>15 Green. I think Traci was probably in charge</p> <p>16 of complaints at that time for Plain Green.</p> <p>17 Neal Junior, Plain Green, myself, Jason,</p> <p>18 Michelle, Carrie, all with Think. And then</p> <p>19 several people with VPC Advisors; Katten Law,</p> <p>20 Rick Eckman which was the Plain Green outside</p> <p>21 counsel; Mark Grossman at Katten. And Katten</p> <p>22 was outside counsel to VPC, as I recall.</p> <p>23 David Randolph, who is a tribal law specialist</p> <p>24 at Connors and Winters; Scott Zennick at VPC</p>	<p style="text-align: right;">Page 28</p> <p>1 form.</p> <p>2 MR. HAWS: Object to form.</p> <p>3 THE WITNESS: Yes.</p> <p>4 BY MR. ACKELSBURG:</p> <p>5 Q. You mentioned this Mr. Randolph, the</p> <p>6 tribal law specialist. Who was he</p> <p>7 representing?</p> <p>8 A. Either Victory Park Capital or GPLS.</p> <p>9 Q. And the complaint that initiated from</p> <p>10 the attorney general looks like it had a copy</p> <p>11 of a loan agreement with it, a Plain Green</p> <p>12 loan agreement. The agreement for this Mr.</p> <p>13 Morelle, do you see that?</p> <p>14 A. Yes.</p> <p>15 Q. This is the form loan agreement that</p> <p>16 you're familiar with, correct?</p> <p>17 A. It's been a lot of years, and as I</p> <p>18 recall in this complaint, you said he had had</p> <p>19 three loans. So I'm not sure -- this was</p> <p>20 probably one of the loan agreements, but there</p> <p>21 were two others. And I'm not sure if they</p> <p>22 were in the same form or not.</p> <p>23 Q. Now do you remember, in terms of the</p> <p>24 loan agreements was Plain Green, there was the</p>

<p style="text-align: right;">Page 29</p> <p>1 original one when it started out in April of</p> <p>2 2011, right?</p> <p>3 A. So I would have to say the first loan</p> <p>4 agreement would be the original loan</p> <p>5 agreement.</p> <p>6 Q. Do you remember what the occasion was or</p> <p>7 the time period of any -- of the changes? You</p> <p>8 said there were two changes made to the loan</p> <p>9 agreement?</p> <p>10 A. No, I didn't say there were two changes</p> <p>11 made. I believe there were various changes</p> <p>12 made by the tribes and their attorneys</p> <p>13 throughout the program, but I couldn't tell</p> <p>14 you when or how many.</p> <p>15 Q. All right. And from the date of the</p> <p>16 Morelle agreement in August of 2012, can you</p> <p>17 tell if that's the original?</p> <p>18 A. I have no clue.</p> <p>19 Q. Okay. But in looking at it, sort of</p> <p>20 generally familiar with the layout and the</p> <p>21 elements of the contents of the loan</p> <p>22 agreement?</p> <p>23 A. It's been so long ago, I could not tell</p> <p>24 you.</p>	<p style="text-align: right;">Page 31</p> <p>1 Q. You're saying --</p> <p>2 A. It was electronically done.</p> <p>3 Q. Thank you. And the loan agreement -- so</p> <p>4 you'll see this is a loan agreement that was</p> <p>5 in August of 2012, and this was to a New York</p> <p>6 borrower named Mr. Morelle.</p> <p>7 If a Pennsylvania borrower</p> <p>8 had taken out a loan at the same period of</p> <p>9 time with Plain Green, the loan agreement</p> <p>10 would have basically looked the same, except</p> <p>11 for this specific amount borrowed or things</p> <p>12 like that? But I mean the form contract was</p> <p>13 the same; am I right?</p> <p>14 MR. SCHEFF: Object to the</p> <p>15 form. You can answer.</p> <p>16 THE WITNESS: Yeah, that's</p> <p>17 correct. I have to add that this is dated</p> <p>18 August of '12. And he had mentioned that it</p> <p>19 was his third agreement, and the complaint, I</p> <p>20 think was in October. So my gut tells me he</p> <p>21 had taken two prior loan agreements, and this</p> <p>22 was probably the third loan agreement.</p> <p>23 BY MR. ACKELSBURG:</p> <p>24 Q. Okay. But if a Pennsylvania borrower</p>
<p style="text-align: right;">Page 30</p> <p>1 Q. The last page has a signature of</p> <p>2 Billianne Raining Bird Morsette. Do you see</p> <p>3 that?</p> <p>4 A. Yes.</p> <p>5 Q. And that's the same Billianne who you</p> <p>6 mentioned got a copy of -- was copied on that</p> <p>7 e-mail?</p> <p>8 A. Correct, she was the CEO of Plain Green.</p> <p>9 Q. Am I right that her signature appeared</p> <p>10 on all of the loan agreements, as long as she</p> <p>11 was the CEO?</p> <p>12 A. I think that's right, yes.</p> <p>13 Q. And this was pre-printed on the form,</p> <p>14 right? I mean she didn't actually handwrite</p> <p>15 her name on those loan agreements, did she?</p> <p>16</p> <p>17 MR. SCHEFF: Object to the</p> <p>18 form. You can answer.</p> <p>19 THE WITNESS: So it's an</p> <p>20 online lender. The tribe -- after the loan</p> <p>21 agreement had been executed by the borrower,</p> <p>22 would then put their signature on accepting</p> <p>23 the loan, yes.</p> <p>24 BY MR. ACKELSBURG:</p>	<p style="text-align: right;">Page 32</p> <p>1 borrowed the same amount of money that Mr.</p> <p>2 Morelle borrowed at that period of time, the</p> <p>3 agreement would have looked the same; am I</p> <p>4 right?</p> <p>5 A. Yes, that's my understanding.</p> <p>6 Q. Now the second page of the -- let's</p> <p>7 start with the letter from the attorney</p> <p>8 general. It's from an employee in the</p> <p>9 attorney general's office, correct? Someone</p> <p>10 named Rachel Mills in the Internet Bureau, do</p> <p>11 you see that?</p> <p>12 A. Yes.</p> <p>13 Q. The nature of the complaint is that the</p> <p>14 New York Attorney General is characterizing</p> <p>15 this as a usurious loan; am I right?</p> <p>16 A. Yes.</p> <p>17 Q. And the complaint letter that's February</p> <p>18 5th, 2013, the complaint letter also states</p> <p>19 that New York law applies to foreign entities?</p> <p>20 A. Where does it state that?</p> <p>21 Q. Sure. Let's look at the second --</p> <p>22 A. Oh, I see, right there. That's what it</p> <p>23 says.</p> <p>24 Q. So in looking at this, it appears that</p>

<p style="text-align: right;">Page 33</p> <p>1 New York was taking the position that the</p> <p>2 interest rate on this loan was illegal, and</p> <p>3 that the New York laws setting rate caps apply</p> <p>4 to foreign entities, as well as New York</p> <p>5 entities. That's the position the New York</p> <p>6 Attorney General is taking in this letter,</p> <p>7 correct?</p> <p>8 MR. SHELDON: Object to form</p> <p>9 and object to characterization of the letter.</p> <p>10 It says earlier, it appears. And then it says</p> <p>11 also, if true, this could constitute a</p> <p>12 violation. But the witness can answer.</p> <p>13 THE WITNESS: Can you repeat</p> <p>14 the question.</p> <p>15 BY MR. ACKELSBURG:</p> <p>16 Q. The attorney general is stating here</p> <p>17 that in the judgement of the office, the loan</p> <p>18 appears to be -- to include an illegal</p> <p>19 interest rate and it's also advising Plain</p> <p>20 Green that New York law applies to foreign</p> <p>21 entities.</p> <p>22 MR. HERMAN: Object to form.</p> <p>23 MR. SHELDON: Same objection</p> <p>24 as before.</p>	<p style="text-align: right;">Page 35</p> <p>1 Q. I understand.</p> <p>2 A. In the relationship with the tribal</p> <p>3 lenders, there were certain duties that they</p> <p>4 asked us, once the format was approved, to</p> <p>5 help them with. So I wouldn't call it an</p> <p>6 agency relationship, but as someone who was</p> <p>7 helping them, they asked us to draft this and</p> <p>8 send back to them. But once they got it, they</p> <p>9 would review it and send it out.</p> <p>10 Q. So the protocol -- the protocol as it</p> <p>11 appears from this document, correct me if I'm</p> <p>12 wrong, is that the complaint would come to the</p> <p>13 tribe. The tribe would forward the complaint</p> <p>14 to Tami Simpson. Tami Simpson would then send</p> <p>15 the tribe the template that she would then</p> <p>16 suggest the tribe mail on their letterhead,</p> <p>17 that's the protocol, right?</p> <p>18 MR. HERMAN: Object to form.</p> <p>19 THE WITNESS: So in general,</p> <p>20 yes. I don't know that they would always go</p> <p>21 to Tami. But it was important for the tribe</p> <p>22 that they keep track of complaints. And so</p> <p>23 they had asked Think Finance to facilitate</p> <p>24 that process. But the whole protocol was</p>
<p style="text-align: right;">Page 34</p> <p>1 THE WITNESS: That's what it</p> <p>2 appears to say.</p> <p>3 BY MR. ACKELSBURG:</p> <p>4 Q. If we look at the second page of the</p> <p>5 exhibit, this is the template letter that you</p> <p>6 referred to before.</p> <p>7 A. I think it would be, yes, one of the</p> <p>8 template letters. There were a few that were</p> <p>9 approved, yes.</p> <p>10 Q. I know -- and this is a template letter</p> <p>11 that you said the tribe would have approved?</p> <p>12 A. Yes, because -- and I say generally this</p> <p>13 is, and I believe it is, I can't remember</p> <p>14 exactly the templates they approved. But</p> <p>15 their outside counsel draft was consulted by</p> <p>16 them and let us know this is the way they wish</p> <p>17 to talk about their federally recognized tribe</p> <p>18 making loans.</p> <p>19 Q. Now I understand that the letter would</p> <p>20 have had to have gone through the outside</p> <p>21 counsel, but the draft was prepared by your</p> <p>22 office; isn't that right?</p> <p>23 A. So that's correct, but it was at the</p> <p>24 instruction of the tribe.</p>	<p style="text-align: right;">Page 36</p> <p>1 approved in advance by the tribe and their</p> <p>2 outside counsel.</p> <p>3 BY MR. ACKELSBURG:</p> <p>4 Q. So your office then would track all of</p> <p>5 the complaints that Plain Green forwarded to</p> <p>6 you, correct?</p> <p>7 A. That's correct, on behalf of the tribe.</p> <p>8 Q. In tracking complaints like this, what</p> <p>9 information did you capture?</p> <p>10 A. I couldn't -- I can't recall.</p> <p>11 Q. Do you recall if there were ever any</p> <p>12 reports to the tribe about the number of</p> <p>13 complaints or the nature of complaints?</p> <p>14 A. I don't recall specifically, but I</p> <p>15 wouldn't be surprised.</p> <p>16 Q. And you also tracked that internally for</p> <p>17 Think Finance purposes, correct?</p> <p>18</p> <p>19 MR. SCHEFF: Object to the</p> <p>20 form, tracked what?</p> <p>21 BY MR. ACKELSBURG:</p> <p>22 Q. The complaints from attorney generals.</p> <p>23 A. I think so, yes.</p> <p>24 Q. How did Think Finance use the</p>

<p style="text-align: right;">Page 37</p> <p>1 information internally?</p> <p>2 A. We would only use it to the extent to</p> <p>3 provide it to the tribe, as the tribe had</p> <p>4 requested.</p> <p>5 Q. So Think Finance -- there were no --</p> <p>6 Think Finance -- didn't Think Finance have an</p> <p>7 interest or concern if attorneys general were</p> <p>8 complaining about the Plain Green product?</p> <p>9 MR. HERMAN: Object to form.</p> <p>10 THE WITNESS: Yeah, I would</p> <p>11 say that any -- because Think Finance provides</p> <p>12 services to lending entities, of course from a</p> <p>13 vendor management perspective, we are always</p> <p>14 concerned with complaints to the lenders that</p> <p>15 we work with.</p> <p>16 BY MR. ACKELSBURG:</p> <p>17 Q. Why?</p> <p>18 A. Because in my role as general counsel, I</p> <p>19 review -- I know that complaints often lead to</p> <p>20 litigation.</p> <p>21 Q. Did the system you have described for</p> <p>22 Plain Green, did you have the same system for</p> <p>23 Great Plains Lending?</p> <p>24</p>	<p style="text-align: right;">Page 39</p> <p>1 BY MR. ACKELSBURG:</p> <p>2 Q. What about Mobiloans? You recall that</p> <p>3 Mobiloans -- Mobiloans was the first lending</p> <p>4 product that the Tunica tribe was involved in;</p> <p>5 you recall that, correct?</p> <p>6 A. I think you asked me two questions.</p> <p>7 Which one do you want me to answer first?</p> <p>8 Q. You can answer both, whatever order</p> <p>9 you'd like.</p> <p>10 A. Can you repeat the question?</p> <p>11 - - -</p> <p>12 (Whereupon the Court Reporter</p> <p>13 read back the pending question.)</p> <p>14 - - -</p> <p>15 THE WITNESS: That's correct.</p> <p>16 BY MR. ACKELSBURG:</p> <p>17 Q. So my question is, given Mobiloans lack</p> <p>18 of experience with lending before its</p> <p>19 relationship with Think Finance, did you</p> <p>20 also -- did Think Finance also prepare</p> <p>21 template responses for Mobiloans for</p> <p>22 complaints received from state attorneys</p> <p>23 general?</p> <p>24 MR. HERMAN: Object to the</p>
<p style="text-align: right;">Page 38</p> <p>1 MR. SCHEFF: Object to the</p> <p>2 form. You can answer.</p> <p>3 BY MR. ACKELSBURG:</p> <p>4 Q. Or something like it.</p> <p>5 MR. SCHEFF: Same objection.</p> <p>6 THE WITNESS: I'm not sure</p> <p>7 because there were different requests from</p> <p>8 different tribes. So I really don't recall.</p> <p>9 It could have been, but I don't recall.</p> <p>10 BY MR. ACKELSBURG:</p> <p>11 Q. What about Mobiloans?</p> <p>12 A. Same answer.</p> <p>13 Q. Do you remember working on template</p> <p>14 responses for Great Plains Lending?</p> <p>15 MR. HERMAN: Object to form,</p> <p>16 mischaracterizes the testimony.</p> <p>17 THE WITNESS: You know, I</p> <p>18 don't recall because that tribe had another</p> <p>19 lending product already in market. So they</p> <p>20 may have already had a format that they wanted</p> <p>21 to use, but they would have sent that to us, I</p> <p>22 believe, for us to use. I really don't recall</p> <p>23 if we did this for them or if they did it</p> <p>24 themselves.</p>	<p style="text-align: right;">Page 40</p> <p>1 form.</p> <p>2 MR. SCHEFF: Objection,</p> <p>3 mischaracterizes testimony.</p> <p>4 THE WITNESS: First of all I</p> <p>5 would have to make sure you understood that</p> <p>6 Tunica Biloxi had -- I think their casino was</p> <p>7 called Paragon. They were a very</p> <p>8 sophisticated tribe. Their outside counsels</p> <p>9 were Kevin Wadzinski with Drinker Biddle, some</p> <p>10 guy at Steptoe Johnson, I can't remember his</p> <p>11 name. And they used Rick Eckman.</p> <p>12 So I feel certain that they</p> <p>13 reviewed and approved a template, as well for</p> <p>14 use in responding to complaints.</p> <p>15 BY MR. ACKELSBURG:</p> <p>16 Q. So probably what happened was that you</p> <p>17 or someone in the legal department would have</p> <p>18 drafted a template that would then have been</p> <p>19 forwarded to the Mobiloans general counsel for</p> <p>20 their approval?</p> <p>21 MR. SCHEFF: Object to the</p> <p>22 form, calls for speculation. You can answer</p> <p>23 the question.</p> <p>24 THE WITNESS: I think you</p>

<p style="text-align: right;">Page 61</p> <p>1 with the vendors. I'm not asking that. I'm</p> <p>2 asking, wasn't Think Finance itself concerned</p> <p>3 about what states it was operating in with the</p> <p>4 tribal products?</p> <p>5 MR. SHELDON: I am going to</p> <p>6 lodge and objection and say, Ms. Cutrona, he</p> <p>7 is now getting into -- the last question --</p> <p>8 your previous questions were about what were</p> <p>9 you doing in terms of tracking, right. And</p> <p>10 you were asking as a factual matter what you</p> <p>11 were doing.</p> <p>12 The last question you posed,</p> <p>13 you phrased slightly differently. And you</p> <p>14 asked about what was Think Finance concerned</p> <p>15 about, and you're asking the general counsel</p> <p>16 that. So I'm going to just instruct Ms.</p> <p>17 Cutrona to be very careful in your answers.</p> <p>18 And if you ever have a question about whether</p> <p>19 or not your answer may require you to say</p> <p>20 something that is a result of legal advice you</p> <p>21 received from outside or inside counsel or</p> <p>22 legal analysis that you conducted in your role</p> <p>23 as general counsel to Think Finance, to not</p> <p>24 give that answer. And we can step out in the</p>	<p style="text-align: right;">Page 63</p> <p>1 good faith compliance with laws and</p> <p>2 regulations. And I think that was the 9th</p> <p>3 affirmative defense.</p> <p>4 What I believe, Mr. Sheldon,</p> <p>5 that you reiterated to us or it might have</p> <p>6 been Mr. Gatewood, several times was that in</p> <p>7 posing that affirmative defense, there was no</p> <p>8 intent on the part of Think Finance to be</p> <p>9 reliant on -- it's not a reliance on counsel</p> <p>10 defense.</p> <p>11 MR. SHELDON: That's correct.</p> <p>12 MR. ACKELSBURG: I just want</p> <p>13 to be clear that that includes not just</p> <p>14 outside counsel but the legal department of</p> <p>15 Think Finance itself?</p> <p>16 MR. SHELDON: That's correct.</p> <p>17 We're not waiving any privilege as to legal</p> <p>18 advice from outside counsel or inside counsel.</p> <p>19 MR. ACKELSBURG: Thank you.</p> <p>20 To speed things along, I am going to show you</p> <p>21 two more complaints. These are from the</p> <p>22 Minnesota Office of Attorney General. We'll</p> <p>23 call this P-397 and 398.</p> <p>24 - - -</p>
<p style="text-align: right;">Page 62</p> <p>1 hallway and talk about it. Do you understand?</p> <p>2 THE WITNESS: Yes.</p> <p>3 MR. SHELDON: Do you want to</p> <p>4 keep that question or do you want the court</p> <p>5 reporter to read it back?</p> <p>6 - - -</p> <p>7 (Whereupon the Court Reporter</p> <p>8 read back the pending question.)</p> <p>9 - - -</p> <p>10 THE WITNESS: Can you read</p> <p>11 that back again.</p> <p>12 MR. SHELDON: She is finding</p> <p>13 the last question.</p> <p>14 - - -</p> <p>15 (Whereupon the Court Reporter</p> <p>16 read back the pending question.)</p> <p>17 - - -</p> <p>18 THE WITNESS: I don't think I</p> <p>19 can answer that question.</p> <p>20 BY MR. ACKELSBURG:</p> <p>21 Q. Let's just -- I want to do this on the</p> <p>22 record. We talked I think last week or</p> <p>23 previous to today, we talked about the</p> <p>24 affirmative defense that I think references</p>	<p style="text-align: right;">Page 64</p> <p>1 (Whereupon Exhibits P-397 and</p> <p>2 P-398 were marked for identification.)</p> <p>3 - - -</p> <p>4 MR. HERMAN: Irv, just so I'm</p> <p>5 clear, 398 is Minnesota and 397 is Mr. McHugh.</p> <p>6 (Cross talk)</p> <p>7 MR. ACKELSBURG: It looks</p> <p>8 like they got mixed up. It looks like it's</p> <p>9 not mixed up by me, it's mixed up in the</p> <p>10 production. It appears that there are two</p> <p>11 Minnesota -- maybe they're both McHugh.</p> <p>12 That's fine.</p> <p>13 MR. HERMAN: Irv, this Bates</p> <p>14 number, on the second page of GPLP-501078. It</p> <p>15 goes back to 140.</p> <p>16 MR. SCHEFF: That's right.</p> <p>17 BY MR. ACKELSBURG:</p> <p>18 Q. Let's forget about 398 and just use 397.</p> <p>19 We're going to forget about 398. Let's just</p> <p>20 use 397.</p> <p>21 I just want to just confirm</p> <p>22 with the witness that this is a complaint that</p> <p>23 was forwarded by Plain Green -- a complaint</p> <p>24 from the Minnesota Attorney General. Ms.</p>

<p style="text-align: right;">Page 65</p> <p>1 Simpson again handled this and forwarded a</p> <p>2 suggested response letter to the tribe, as</p> <p>3 with the previous complaints we looked at.</p> <p>4 A. Yes, but I would clarify because I think</p> <p>5 it's very important that the suggested</p> <p>6 response was that that had been reviewed and</p> <p>7 approved previously by the tribe and their</p> <p>8 counsel.</p> <p>9 Q. And as with the other complaints, the</p> <p>10 complaint and the proposed response was sent</p> <p>11 to Victory Park Capital?</p> <p>12 A. Yes, there are certain people on here,</p> <p>13 Victory Park Capital received this.</p> <p>14 Q. Also to Victory Park's lawyers at</p> <p>15 Katten?</p> <p>16 A. Yes, and to David Randolph at Connor and</p> <p>17 Winters, who is a tribal attorney.</p> <p>18 Q. For Victory Park, correct?</p> <p>19 A. Correct. And to Rick Eckman who's the</p> <p>20 attorney for the tribe. And obviously it went</p> <p>21 to the CEO Billianne and Jennifer at Plain</p> <p>22 Green.</p> <p>23 Q. I want to shift gears for a second.</p> <p>24 When you were general counsel, there would be</p>	<p style="text-align: right;">Page 67</p> <p>1 A. Yes.</p> <p>2 Q. And if you want to go through, take your</p> <p>3 time.</p> <p>4 MR. HERMAN: I am going to</p> <p>5 impose an objection to form on that last</p> <p>6 question.</p> <p>7 MR. ACKELSBURG: That's fine.</p> <p>8 THE WITNESS: Okay.</p> <p>9 BY MR. ACKELSBURG:</p> <p>10 Q. These offsites, these executive offsite</p> <p>11 meetings with Ken Rees, who would be in</p> <p>12 attendance at those?</p> <p>13 A. So this would be March of 2013.</p> <p>14 Generally, it varied over time. It would be</p> <p>15 the executive team and it may include some one</p> <p>16 -downs from the executive team.</p> <p>17 But you know, I might add</p> <p>18 this, we generally, in fact, a lot of times</p> <p>19 have various drafts at presentations, and I</p> <p>20 have to say that I don't know that this, in</p> <p>21 fact, was a presentation that was used. It</p> <p>22 could have been a draft, but it could have</p> <p>23 been used in this offsite. Because as Ken is</p> <p>24 drafting or anyone else, there's various</p>
<p style="text-align: right;">Page 66</p> <p>1 an occasional offsite meeting of the executive</p> <p>2 team, do you recall that?</p> <p>3 A. Yes.</p> <p>4 Q. And that would be done on roughly a</p> <p>5 quarterly basis?</p> <p>6 A. Yes, I agree with that.</p> <p>7 Q. So I want to show you a PowerPoint from</p> <p>8 one of those executive team offsites. This</p> <p>9 was in the first quarter of 2013. And we will</p> <p>10 call this P-400, so the record is not</p> <p>11 confused. P-399, I'm sorry.</p> <p>12 - - -</p> <p>13 (Whereupon Exhibit P-399 was</p> <p>14 marked for identification.)</p> <p>15 - - -</p> <p>16 BY MR. ACKELSBURG:</p> <p>17 Q. I will represent to you that in the</p> <p>18 metadata that accompanied this production from</p> <p>19 Think Finance, it has the author as Ken Rees,</p> <p>20 created time of March 28th, 2013.</p> <p>21 Let me ask a preliminary</p> <p>22 question first: Would it be common for Ken</p> <p>23 Rees to prepare a PowerPoint for those</p> <p>24 executive offsite meetings?</p>	<p style="text-align: right;">Page 68</p> <p>1 iterations of PowerPoints.</p> <p>2 So you haven't asked me, but</p> <p>3 you might ask me, and I cannot say for sure</p> <p>4 that this was reviewed -- this exact deck was</p> <p>5 reviewed at the March 28th, 2013 executive</p> <p>6 team offsite.</p> <p>7 Q. But you're not challenging the fact that</p> <p>8 this would have been prepared by Ken Rees, if</p> <p>9 the metadata says it was?</p> <p>10 A. No, I'm not at all.</p> <p>11 MR. SCHEFF: Objection to</p> <p>12 form.</p> <p>13 BY MR. ACKELSBURG:</p> <p>14 Q. Am I right -- just talking procedurally,</p> <p>15 that after one of these offsites with the</p> <p>16 executive team and maybe one down in</p> <p>17 authority, that there would be PowerPoints</p> <p>18 prepared for then a larger audience within the</p> <p>19 company?</p> <p>20 A. I can't say that as a general rule.</p> <p>21 Q. Let me just -- I'm going to look at what</p> <p>22 -- we'll call this P-400.</p> <p>23 - - -</p> <p>24 (Whereupon Exhibit P-400 was marked</p>

<p style="text-align: right;">Page 69</p> <p>1 for identification.)</p> <p>2 - - -</p> <p>3 MR. SHELDON: Ms. Cutrona,</p> <p>4 after you finish reviewing, I need to ask you</p> <p>5 a quick question about this document and then</p> <p>6 we will be right back in.</p> <p>7 THE WITNESS: Let's step out.</p> <p>8 VIDEOTAPE OPERATOR: Off the</p> <p>9 record, 9:42. Back on the record at 9:45.</p> <p>10 MR. SHELDON: After consulting</p> <p>11 with Ms. Cutrona regarding this document, it</p> <p>12 does appear that she was involved in providing</p> <p>13 information to Mr. Rees or others that was</p> <p>14 used in this, as well as potentially</p> <p>15 presenting information in here. But she can't</p> <p>16 recall which specific portions.</p> <p>17 So what I'm going to do Mr.</p> <p>18 Ackelsberg, is allow you to proceed with your</p> <p>19 questions. We'll see where they go. And if</p> <p>20 they go into privileged information, then we</p> <p>21 will address it at that time. Okay.</p> <p>22 BY MR. ACKELSBURG:</p> <p>23 Q. Thank you. We have two PowerPoints</p> <p>24 from roughly the same time period, do you see</p>	<p style="text-align: right;">Page 71</p> <p>1 MR. HERMAN: I'm going to</p> <p>2 impose an objection on the prefatory</p> <p>3 statements, and I object to form.</p> <p>4 THE WITNESS: Yes, it appears</p> <p>5 that there was a quarterly business review to</p> <p>6 a larger audience after the executive team</p> <p>7 offsite.</p> <p>8 BY MR. ACKELSBURG:</p> <p>9 Q. Who would be at this larger --</p> <p>10 generally, who would attend a larger quarterly</p> <p>11 review, an example of which is we're looking</p> <p>12 at P-400?</p> <p>13 MR. SCHEFF: At what time</p> <p>14 period?</p> <p>15 THE WITNESS: At what time</p> <p>16 period, because it would vary.</p> <p>17 BY MR. ACKELSBURG:</p> <p>18 Q. You can see what time period we're</p> <p>19 looking at.</p> <p>20 A. I could guess, and my guess would be --</p> <p>21 MR. SCHEFF: You shouldn't</p> <p>22 guess. If you have an educated reason for</p> <p>23 your provided response, you can provide it.</p> <p>24 BY MR. ACKELSBURG:</p>
<p style="text-align: right;">Page 70</p> <p>1 that, right?</p> <p>2 A. Yes, one is March and one is April.</p> <p>3 Q. Right. So the first one that we looked</p> <p>4 at, 399 -- and I mentioned to you that the</p> <p>5 metadata says it was created on March 28th,</p> <p>6 and that's for an executive team offsite of</p> <p>7 March 28th. Do you see that?</p> <p>8 A. Yes.</p> <p>9 Q. The second one, according to the</p> <p>10 metadata, it was created by Mr. Rees on April</p> <p>11 4th, 2013. And then it says, modified April</p> <p>12 8th, 2013. I'm just reading from the</p> <p>13 metadata, just for your informational</p> <p>14 purposes.</p> <p>15 A. Does it say who it was modified by?</p> <p>16 Q. It just says Ken Rees. I have it if</p> <p>17 anyone wants to see that.</p> <p>18 So my question is, from --</p> <p>19 now looking at the second of the two</p> <p>20 PowerPoints, the one that we've identified as</p> <p>21 P-400, and looking at the agenda on the second</p> <p>22 page, would I be correct in saying that this</p> <p>23 PowerPoint was for a larger audience within</p> <p>24 the company?</p>	<p style="text-align: right;">Page 72</p> <p>1 Q. Based on your experience and</p> <p>2 recollections of serving as the general</p> <p>3 counsel?</p> <p>4 A. I believe, but I can't be certain that</p> <p>5 at the quarterly business review during this</p> <p>6 time period, the audience would have been</p> <p>7 Think Finance employees who were at a director</p> <p>8 or above title. Sometimes there were</p> <p>9 additional guests asked to attend.</p> <p>10 Q. Roughly how many people would we be</p> <p>11 talking about, putting aside the guess. 20,</p> <p>12 30, 40, 100, just roughly, how big a group?</p> <p>13 A. I would say between 40 and 60.</p> <p>14 Q. Would meetings of that size be conducted</p> <p>15 in the Think Finance office in Fort Worth, or</p> <p>16 would you need an outside space?</p> <p>17 A. It would vary, but probably for that</p> <p>18 size it would have been outside of the Think</p> <p>19 Finance offices.</p> <p>20 Q. Where you would use a bigger space than</p> <p>21 somewhere in Fort Worth?</p> <p>22 A. Uh-huh, yes.</p> <p>23 Q. Let's go to the earlier iteration, the</p> <p>24 one that's titled: Executive Team Offsite,</p>

<p style="text-align: right;">Page 73</p> <p>1 the one from March 28th. That's P-399. Are</p> <p>2 you with me?</p> <p>3 A. Yes, I am.</p> <p>4 Q. If you look at the tables on page two</p> <p>5 and page three; on page two, the title of the</p> <p>6 table is Think Finance has experienced</p> <p>7 explosive growth, do you see that?</p> <p>8 A. Yes.</p> <p>9 Q. And on the next page there is, however,</p> <p>10 a proviso and it says, we are not adhering to</p> <p>11 our diversification strategy. Do you see</p> <p>12 that?</p> <p>13 A. Yes.</p> <p>14 Q. And in 2013, I'll see if I'm reading</p> <p>15 this correctly, that the company had revenues</p> <p>16 north of 800 million, correct?</p> <p>17 A. Well, yeah, I would say yes.</p> <p>18 Q. And that revenue was all from tribal</p> <p>19 products, except for an amount less than 100</p> <p>20 million. Is that what that table says?</p> <p>21 A. It looks like it, but I have to tell</p> <p>22 you, I don't -- there's also on the -- I don't</p> <p>23 know what it's called, the scale, it says also</p> <p>24 direct, in the color between direct and bank</p>	<p style="text-align: right;">Page 75</p> <p>1 different products.</p> <p>2 I think during this time,</p> <p>3 there may have been depressed products,</p> <p>4 spendable, the UK, lending and maybe My Salary</p> <p>5 Line, which was a bank product, as well. I</p> <p>6 can't recall specifically this time period.</p> <p>7 Q. But your understanding of the meaning of</p> <p>8 this table is that at this point in time, Ken</p> <p>9 Rees is suggesting to the executive team that</p> <p>10 the company is too reliant on the tribal</p> <p>11 product, as opposed to the other products?</p> <p>12 MR. HERMAN: Objection to</p> <p>13 form.</p> <p>14 THE WITNESS: I would say</p> <p>15 that he's suggesting what it says here, that</p> <p>16 we are not adhering to our diversification</p> <p>17 strategy.</p> <p>18 BY MR. ACKELSBURG:</p> <p>19 Q. What do you understand that to mean,</p> <p>20 with regard to this table?</p> <p>21 A. Putting all of your eggs in one basket.</p> <p>22 Q. And in this case, the one basket being</p> <p>23 tribal?</p> <p>24 A. Yes.</p>
<p style="text-align: right;">Page 74</p> <p>1 you can't tell because it's in black and</p> <p>2 white. But I would assume that the number</p> <p>3 that's below 100 million consist of direct and</p> <p>4 bank, and then the other number, the latter</p> <p>5 number is tribal.</p> <p>6 Q. Actually back in 2013, there were no</p> <p>7 bank products at that point; am I right?</p> <p>8 A. I don't know for sure.</p> <p>9 Q. But we can agree that of the 800 million</p> <p>10 in revenue in 2013, according to this table,</p> <p>11 more than 700 million was from the tribal</p> <p>12 products?</p> <p>13 A. That's what this chart says, appears to</p> <p>14 say.</p> <p>15 Q. So am I correct that the statement, we</p> <p>16 are not adhering to our diversification</p> <p>17 strategy, the meaning of that is that the</p> <p>18 company has become too dependent on the tribal</p> <p>19 products for its revenue?</p> <p>20 A. So I would not adopt the words that you</p> <p>21 used, I would say that the company has always</p> <p>22 had the idea that diversification was</p> <p>23 important for the stability of the company and</p> <p>24 was a good business decision. And that means</p>	<p style="text-align: right;">Page 76</p> <p>1 Q. Now if you turn to the fifth page of the</p> <p>2 PowerPoint, TFPA-913. Am I right that what</p> <p>3 Mr. Rees is suggesting in this slide is that</p> <p>4 the tribal products should be strengthened</p> <p>5 against potential attacks, but that the</p> <p>6 company should be paying more attention to</p> <p>7 accelerating the growth of the non-tribal</p> <p>8 products?</p> <p>9 MR. HERMAN: Objection to</p> <p>10 form.</p> <p>11 THE WITNESS: So as far as</p> <p>12 this particular slide, I am not sure if Mr.</p> <p>13 Rees went over this or if he had asked me to</p> <p>14 discuss this during this time. Because when</p> <p>15 we had executive offsites, we would go around</p> <p>16 the room talking about our particular</p> <p>17 expertise.</p> <p>18 BY MR. ACKELSBURG:</p> <p>19 Q. Right. What's your understanding of</p> <p>20 this slide? Would you say it's</p> <p>21 self-explanatory?</p> <p>22 A. It says: Restructure, make all</p> <p>23 reasonable changes to improve structure of</p> <p>24 tribal products against potential attacks.</p>

<p style="text-align: right;">Page 77</p> <p>1 And the refocus would be accelerate growth of</p> <p>2 non-tribal businesses.</p> <p>3 My read of this would be that</p> <p>4 it's -- this gets back to the diversification</p> <p>5 discussion that you were just asking me about</p> <p>6 earlier.</p> <p>7 Q. Okay. If you flip the page, and now</p> <p>8 what Mr. Rees is doing is now breaking down</p> <p>9 his suggestions in the restructure area from</p> <p>10 the previous slide. Do you see that?</p> <p>11 MR. HERMAN: Objection to</p> <p>12 form.</p> <p>13 THE WITNESS: Yes. I would</p> <p>14 also like to say at this point that some of</p> <p>15 the content on this slide was likely from</p> <p>16 discussions that he and I had prior to him</p> <p>17 putting the slide together.</p> <p>18 BY MR. ACKELSBURG:</p> <p>19 Q. Okay, fine. The increasing tribal</p> <p>20 management and oversight, is that something</p> <p>21 that would have come out of your conversations</p> <p>22 with Mr. Rees?</p> <p>23 A. Potentially, I don't recall.</p> <p>24 Q. So you don't recall specifically any</p>	<p style="text-align: right;">Page 79</p> <p>1 advice to him or answered legal questions,</p> <p>2 then I need you to point that out and we can</p> <p>3 step out in the hall or Mr. Ackelsberg can</p> <p>4 choose to move on.</p> <p>5 Do you understand how I would</p> <p>6 like you to approach answering these questions</p> <p>7 on these bullet points?</p> <p>8 THE WITNESS: Yes.</p> <p>9 MR. SHELDON: Mr. Ackelsberg,</p> <p>10 please proceed.</p> <p>11 BY MR. ACKELSBURG:</p> <p>12 Q. Why don't we do it this way. Look at,</p> <p>13 just to save time. Look at the bullet points.</p> <p>14 Are there any bullet points there that you</p> <p>15 believe are there based on Ken Rees speaking</p> <p>16 to you and seeking legal advice?</p> <p>17 A. Yes, I would say definitely the second</p> <p>18 -- reduce contractual roles for Think Finance;</p> <p>19 Mirror Mortgage Lending and improve deal</p> <p>20 optics; exit high-risk states; government</p> <p>21 affairs and PR. That's probably it.</p> <p>22 Q. Without revealing specific advice that</p> <p>23 you gave to Ken Rees, do you recall the nature</p> <p>24 of the work that you did with regard to the</p>
<p style="text-align: right;">Page 78</p> <p>1 advice that you gave Mr. Rees with regard to</p> <p>2 increasing tribal management and oversight?</p> <p>3 MR. SHELDON: Objection to</p> <p>4 form.</p> <p>5 MR. SCHEFF: At this point in</p> <p>6 time, March 28th, 2013?</p> <p>7 MR. ACKELSBURG: Yes.</p> <p>8 MR. SHELDON: For this</p> <p>9 particular slide, Ms. Cutrona. Ms. Cutrona,</p> <p>10 what I presume is going to happen here is he's</p> <p>11 going to ask you a series of questions about</p> <p>12 the bullet points on this page.</p> <p>13 If you don't recall really</p> <p>14 anything about the bullet points, then I'm</p> <p>15 fine with you telling him that you don't</p> <p>16 recall. If you recall things about the bullet</p> <p>17 points that are due to Mr. Rees talking to the</p> <p>18 group at large and don't involve any legal</p> <p>19 advice you provided to Mr. Rees, then I'm fine</p> <p>20 with you answering the questions in that</p> <p>21 respect too.</p> <p>22 If for any particular bullet</p> <p>23 points you recall having specific discussions</p> <p>24 with Mr. Rees in which you conveyed legal</p>	<p style="text-align: right;">Page 80</p> <p>1 topic of exiting high-risk states?</p> <p>2 MR. SCHEFF: Can you clarify</p> <p>3 what you mean by the nature of the work she</p> <p>4 did?</p> <p>5 MR. SHELDON: Are you asking</p> <p>6 her to reveal what kind of legal analysis she</p> <p>7 did to look into that area?</p> <p>8 MR. ACKELSBURG: No, I'm not</p> <p>9 asking for the substance of the legal</p> <p>10 analysis. I'm saying, what is it -- did you</p> <p>11 conduct legal analysis in the area of exiting</p> <p>12 high-risk states?</p> <p>13 MR. SCHEFF: On her own?</p> <p>14 BY MR. ACKELSBURG:</p> <p>15 Q. Or did someone do it for you? I don't</p> <p>16 know.</p> <p>17 MR. SHELDON: Ms. Cutrona,</p> <p>18 for that question, can you limit your response</p> <p>19 right now to yes or no.</p> <p>20 THE WITNESS: Can you ask the</p> <p>21 question again, please?</p> <p>22 - - -</p> <p>23 (Whereupon the Court Reporter</p> <p>24 read back the pending question.)</p>

<p style="text-align: right;">Page 89</p> <p>1 legislation in support of tribal ecommerce, 2 but I would -- I helped facilitate the first 3 initial meetings. And it was also important 4 to me that the tribal members of the 5 association have the sole voting authority in 6 the association. 7 And so I suggested that. And 8 I also suggested -- and I don't know if it was 9 actually adopted, but I suggested a dues 10 structure for the association. 11 Q. Did you also make suggestions with 12 regard to Think Finance contributions to the 13 association? 14 A. It would have been more in line with -- 15 I don't know about contributions, but it would 16 be in line with the dues structure. 17 Q. So, for example, there was some 18 litigation that was planned by NAFSA. You 19 recall that, right, with regard to the tribal 20 products that Plain Green, Great Plains 21 Lending, Mobiloans; do you recall NAFSA 22 planning some litigation? 23 A. So what period are you talking about 24 here?</p>	<p style="text-align: right;">Page 91</p> <p>1 Think Finance; am I right? 2 A. I believe that's right. However, about 3 that time Martin Wong came along and was 4 working in compliance. And before a lawsuit 5 was filed, I was asked to not participate in 6 those discussions, and Martin was the main 7 contact. 8 Q. In fact, Martin was coordinating that 9 litigation effort, was he not? 10 A. You know, you're using the word 11 coordinating that effort, and I don't think I 12 can adopt that, your words. 13 Q. What was Martin's role with regard to 14 the New York litigation? 15 A. So, as I told you, I was taken off. And 16 when I say taken off, that means I wasn't 17 copied on e-mails at all times. I don't know 18 what he did with regard to that. So I cannot 19 say, and I can't adopt the language that you 20 just used. 21 Q. Why were you taken off any involvement 22 in the New York litigation? 23 MR. SHELDON: Ms. Cutrona, 24 you can answer that to the extent it doesn't</p>
<p style="text-align: right;">Page 90</p> <p>1 Q. 2013, 2014, before you left for Elevate. 2 A. So I believe that's correct, I believe 3 that's correct. 4 Q. So we'll talk about it in some detail 5 later on. So there was litigation that NAFSA 6 planned -- for purposes of supporting the 7 Plain Green and Great Plains lending products, 8 correct? 9 A. No, I don't think that's correct. 10 Q. What was wrong with what I just said? 11 A. If you're referring to New York 12 litigation, it's my understanding that the 13 Otoe-Missouria tribe out of California, which 14 had the Great Plains product, was the 15 plaintiff in that lawsuit, and the Chippewa 16 Cree tribe was not. 17 MR. SHELDON: Ms. Cutrona, 18 you just said the Otoe-Missouria tribe out of 19 California -- 20 THE WITNESS: Excuse me, 21 Oklahoma. 22 BY MR. ACKELSBURG: 23 Q. That litigation, since you mentioned it, 24 that litigation was supported financially by</p>	<p style="text-align: right;">Page 92</p> <p>1 require to you involve legal advice you 2 provided to people inside Think Finance or 3 questions that they posed to you. 4 THE WITNESS: I'm not a 5 litigator. 6 BY MR. ACKELSBURG: 7 Q. Okay. Now the last initiative listed is 8 the exit riskiest states initiative that we 9 looked at before on the previous slide. Do 10 you see that? 11 A. Yes. 12 Q. With regard to that initiative, Mr. Rees 13 is saying, no one needs to do anything because 14 it's done -- 15 MR. HERMAN: Objection to 16 form. 17 BY MR. ACKELSBURG: 18 Q. Do you see that? 19 MR. HERMAN: Objection to 20 form. 21 THE WITNESS: I see what it 22 says, I don't know if he was talking to this 23 slide or if I was. 24 BY MR. ACKELSBURG:</p>

<p style="text-align: right;">Page 93</p> <p>1 Q. Okay, but one of you were saying that</p> <p>2 it's not something where more work needs to be</p> <p>3 done, it's been completed, that's the meaning</p> <p>4 of that slide, right?</p> <p>5 MR. HERMAN: Objection to</p> <p>6 form.</p> <p>7 THE WITNESS: That's what it</p> <p>8 appears to say.</p> <p>9 BY MR. ACKELSBURG:</p> <p>10 Q. Do you recall in this very time period</p> <p>11 that Think Finance adopted something called a</p> <p>12 no state list for the tribal products, do you</p> <p>13 remember that?</p> <p>14 A. So I think -- I know that there is</p> <p>15 something called a no state list.</p> <p>16 Q. Okay.</p> <p>17 A. I don't know when it was adopted.</p> <p>18 Q. I'm going to show you a document, this</p> <p>19 has already been marked.</p> <p>20 MR. SHELTON: Are we setting</p> <p>21 aside 399 and 400?</p> <p>22 BY MR. ACKELSBURG:</p> <p>23 Q. Yes. We're going to look at a document</p> <p>24 that has already been marked as plaintiff's</p>	<p style="text-align: right;">Page 95</p> <p>1 Do you see that?</p> <p>2 A. Yes.</p> <p>3 Q. And you'll see that the subject is final</p> <p>4 no state list for Plain Green, Great Plains</p> <p>5 Lending and Mobiloans. Do you see that?</p> <p>6 A. Yes.</p> <p>7 Q. Michelle Nguyen is not a lawyer, right?</p> <p>8 A. No.</p> <p>9 Q. Are there any lawyers that Michelle is</p> <p>10 sending on the transmittal list for this</p> <p>11 e-mail?</p> <p>12 A. No.</p> <p>13 Q. Now Michelle Nguyen didn't come up with</p> <p>14 the no state list, did she?</p> <p>15 A. No, it looks like, if you look up above,</p> <p>16 that maybe there was some legal advice given</p> <p>17 from Patton Boggs and Claudia Callaway.</p> <p>18 Q. That's what I want to ask you about now.</p> <p>19 We're talking -- am I right that this is the</p> <p>20 same subject that was described as exit high-</p> <p>21 risk states in the previous documents we were</p> <p>22 looking at?</p> <p>23 A. I think it might be, but this says no</p> <p>24 state list; and the other one was high-risk</p>
<p style="text-align: right;">Page 94</p> <p>1 exhibit P-254. I believe last week we looked</p> <p>2 at another version of this that we labeled</p> <p>3 P-388, just for the benefit of counsel.</p> <p>4 A. Okay.</p> <p>5 Q. Starting -- this is an e-mail thread.</p> <p>6 Let's start from the first e-mail which is</p> <p>7 dated March 27th. Do you see that that's</p> <p>8 actually the day before the earlier of the two</p> <p>9 PowerPoints, the executive offsite. Do you</p> <p>10 see that?</p> <p>11 MR. SHELTON: If we can go</p> <p>12 off the record, I just have a question for</p> <p>13 you.</p> <p>14 VIDEOTAPE OPERATOR: Off the</p> <p>15 record, 10:22.</p> <p>16 - - -</p> <p>17 (A discussion was held off the record.)</p> <p>18 - - -</p> <p>19 VIDEOTAPE OPERATOR: Back on</p> <p>20 the record, 10:23.</p> <p>21 BY MR. ACKELSBURG:</p> <p>22 Q. You'll see that the first e-mail is from</p> <p>23 Michelle Nguyen to various people in Think</p> <p>24 Finance, in the Think Finance organization.</p>	<p style="text-align: right;">Page 96</p> <p>1 states. And I don't know if, in Ken's mind,</p> <p>2 those were the same.</p> <p>3 Q. Can you think of any other list -- was</p> <p>4 there any other list of high-risk states,</p> <p>5 other than the no state list that we're</p> <p>6 looking at here?</p> <p>7 A. I don't remember, there could have been.</p> <p>8 Q. There could have been. Do you remember</p> <p>9 ever seeing a list of states other than the 14</p> <p>10 states that are listed here on Exhibit P-254?</p> <p>11 MR. SHELTON: Ms. Cutrona,</p> <p>12 I'll just give you an instruction. If your</p> <p>13 answer is, you don't remember or you don't</p> <p>14 know, I'm fine with you giving him that</p> <p>15 answer. If your answer would be affirmative</p> <p>16 in some sense, and it would require you to</p> <p>17 reveal legal analysis that was done inside</p> <p>18 Think or at the request of Think by outside</p> <p>19 counsel, I'd ask you to acknowledge that and</p> <p>20 we can step out in the hall and discuss how to</p> <p>21 handle it.</p> <p>22 THE WITNESS: I think we need</p> <p>23 to step out.</p> <p>24 VIDEOTAPE OPERATOR: Off the</p>

<p style="text-align: right;">Page 97</p> <p>1 record, 10:25. Back on the record. 2 BY MR. ACKELSBURG: 3 Q. Without getting into, well, I will ask 4 you a different question. The work in 5 preparing this list was done with the help of 6 outside counsel? 7 A. Yes. 8 Q. And the Claudia that's referenced in the 9 e-mail, that's Claudia Callaway, correct? 10 A. Yes. 11 Q. It also references Patton Boggs? 12 A. That's correct. 13 Q. Did you hire Patton Boggs and Claudia 14 Callaway to help with this effort? 15 A. So, both Claudia -- I wouldn't phrase it 16 that way. Claudia and Patton Boggs both 17 worked on various issues for Think Finance. 18 Q. Specifically worked on the issue of 19 identifying high-risk states? 20 A. Yes, they were involved. 21 Q. Who at Patton Boggs was involved? 22 A. I think Ed Garris was one of the 23 attorneys and there was another one whose last 24 name was Fagan, not spelled the same way my</p>	<p style="text-align: right;">Page 99</p> <p>1 reveal specific types of analyses that they 2 conducted for you, other than what's discussed 3 in this particular e-mail. 4 So I would instruct you just 5 to be cautious in your answers, and if there's 6 anything we need to discuss, we can. 7 THE WITNESS: Okay. So the 8 answer is yes. 9 MR. ACKELSBURG: Can you read 10 back the question that the answer was yet to? 11 - - - 12 (Whereupon the Court Reporter 13 read back the question.) 14 - - - 15 THE WITNESS: I would 16 probably re-characterize that as non-prime 17 lending. 18 BY MR. ACKELSBURG: 19 Q. Was there a -- Ms. Cutrona, we were 20 provided last week with some retainer 21 agreements between Ms. Callaway and Think 22 Finance. And I will represent to you that one 23 was from 2009 to help with the Payday One 24 product. And then there was a 2012 retainer</p>
<p style="text-align: right;">Page 98</p> <p>1 maiden name is. 2 Q. Mr. Garris is an expert in Indian law, 3 correct? 4 A. Yes, he understands Indian law and he 5 also does many other things, corporate work. 6 Q. But as between Patton Boggs and -- 7 Claudia is a specialist -- Claudia Callaway is 8 a specialist in regulatory environment in the 9 different environment in the different states 10 with regard to high-rate lending, correct? 11 A. My -- I don't know how to answer that. 12 I think some people would say she is, some 13 people would say she isn't. Her engagement 14 here was actually -- 15 MR. SHELTON: Ms. Cutrona, I 16 just want to caution you. I am okay with a 17 level of specificity of you saying, for 18 instance, that you engaged Ms. Callaway or 19 Patton Boggs on consumer regulatory matters. 20 And to the extent Mr. Ackelsberg wants to know 21 if that's within their field, I'm okay with 22 you answering that too, within your personal 23 knowledge. I am worried that your answers are 24 about to veer into having to necessarily</p>	<p style="text-align: right;">Page 100</p> <p>1 dealing with the CIDs received from the CFCB. 2 So my question is, was there 3 any retainer agreement between Think Finance 4 and Ms. Callaway with regard to the work she 5 did on developing the no state list? 6 MR. SCHEFF: Object to the 7 form, mischaracterizes the testimony. You can 8 answer the question. 9 THE WITNESS: So I don't know 10 the answer to that, but I have to tell you I 11 am surprised there was one regarding payday in 12 2009. Because I started in 2006, and most of 13 the work on payday would have been done before 14 2009. 15 BY MR. ACKELSBURG: 16 Q. I would be happy to show you -- I 17 promise to show them to you before we finish. 18 But you don't recall there 19 being anything in writing requesting any work 20 product from Ms. Callaway as to high-risk 21 states? 22 MR. SHELTON: Are you talking 23 about specifically engagement or retainer 24 letters?</p>

<p style="text-align: right;">Page 133</p> <p>1 THE WITNESS: I appreciate</p> <p>2 that. You don't want me passing out.</p> <p>3 MR. ACKELSBURG: I don't want</p> <p>4 you passing out. I'll never hear the end of</p> <p>5 it.</p> <p>6 - - -</p> <p>7 (Whereupon Exhibit P-403 was</p> <p>8 marked for identification.)</p> <p>9 - - -</p> <p>10 BY MR. ACKELSBURG:</p> <p>11 Q. This one, I think, will be fairly quick.</p> <p>12 So this is just a vendor list from June of</p> <p>13 2012. I will represent to you that I have not</p> <p>14 produced the entire spreadsheet because it's</p> <p>15 massive and I'm only interested in the entry</p> <p>16 that's on the last page.</p> <p>17 So you'll see that on the</p> <p>18 vendor list is Tami Simpson, who had various</p> <p>19 invoices that were paid and this is in the</p> <p>20 2011 time period.</p> <p>21 So my question is, if you</p> <p>22 know, why Tami Simpson, the legal manager on</p> <p>23 those early e-mails we looked at with regard</p> <p>24 to the complaints from the AG's, why she is</p>	<p style="text-align: right;">Page 135</p> <p>1 Q. Do you recall her laying out the money</p> <p>2 and being reimbursed for license fees?</p> <p>3 A. We don't have a corporate credit card,</p> <p>4 so someone pays and is reimbursed.</p> <p>5 Q. Oh, okay. There's the answer. Thank</p> <p>6 you. Won't anybody give you credit?</p> <p>7 A. Is that a joke?</p> <p>8 - - -</p> <p>9 (Whereupon Exhibit P-404 was</p> <p>10 marked for identification.)</p> <p>11 - - -</p> <p>12 MR. SHELDON: I'm going to need</p> <p>13 to step out and talk to Ms. Cutrona about this</p> <p>14 document.</p> <p>15 VIDEOTAPE OPERATOR: Off the</p> <p>16 record. Back on the record, 11:23.</p> <p>17 MR. SHELDON: Mr. Ackelsberg,</p> <p>18 this document appears to have been</p> <p>19 inadvertently produced and it contains</p> <p>20 privileged materials, including the analysis</p> <p>21 of Ms. Cutrona concerning legal issues. We're</p> <p>22 going to claw it back pursuant to the</p> <p>23 protective order in this matter.</p> <p>24 At this time, it's hard for me</p>
<p style="text-align: right;">Page 134</p> <p>1 being paid as a vendor, if you know?</p> <p>2 A. So what page specifically are you</p> <p>3 talking about?</p> <p>4 Q. The last page of the document.</p> <p>5 A. This was in 2011?</p> <p>6 Q. Yes.</p> <p>7 A. I can speculate --</p> <p>8 MR. SCHEFF: You cannot</p> <p>9 speculate.</p> <p>10 BY MR. ACKELSBURG:</p> <p>11 Q. We are not interested in wild guesses,</p> <p>12 we are interested in what you can surmise just</p> <p>13 based on your experience. And you can</p> <p>14 condition it anyway you wish.</p> <p>15 MR. SCHEFF: Ms. Cutrona, if</p> <p>16 you have a reasonable basis to answer Mr.</p> <p>17 Ackelsberg's question, then you can answer it.</p> <p>18 THE WITNESS: I think I do.</p> <p>19 This is probably related to either expense</p> <p>20 reports that she had or it would be related to</p> <p>21 maybe licensing fees for the Payday One</p> <p>22 product or examination fees imposed by</p> <p>23 regulatory examinations.</p> <p>24 BY MR. ACKELSBURG:</p>	<p style="text-align: right;">Page 136</p> <p>1 to tell if there's really any substance of it</p> <p>2 that could be relayed that's non-privileged.</p> <p>3 So I'm not sure if it's going to be an entire</p> <p>4 clawback or just a redaction. But what I will</p> <p>5 tell you, for the sake of your record, so you</p> <p>6 can understand, is that my understanding is</p> <p>7 the compliance department conducted interviews</p> <p>8 with employees to set up compliance and audit</p> <p>9 schedule. Where those interviews were with</p> <p>10 non-legal personnel, they have been produced</p> <p>11 and we don't claim privilege over that. But</p> <p>12 in this case, the interview was with Ms.</p> <p>13 Cutrona, in her role as general counsel. And</p> <p>14 the answers that she provided, which are</p> <p>15 reflected here, include ratings and other</p> <p>16 things, reflect her legal analysis and her</p> <p>17 work as providing legal advice to Think</p> <p>18 Finance.</p> <p>19 BY MR. ACKELSBURG:</p> <p>20 Q. Ms. Cutrona, let me ask you this: Do</p> <p>21 you remember when these compliance interviews,</p> <p>22 the risk analysis interviews were conducted</p> <p>23 back in 2011?</p> <p>24 A. No, I don't remember, I know they</p>

<p style="text-align: right;">Page 137</p> <p>1 occurred.</p> <p>2 Q. Do you remember being interviewed by</p> <p>3 Kurt Tunnell?</p> <p>4 A. I don't remember being interviewed by</p> <p>5 Kurt Tunnell.</p> <p>6 Q. All right, we will move on.</p> <p>7 - - -</p> <p>8 (Whereupon Exhibit P-405 was</p> <p>9 marked for identification.)</p> <p>10 - - -</p> <p>11 BY MR. ACKELSBURG:</p> <p>12 Q. So this actually relates to some matters</p> <p>13 that we talked about before, do you see that?</p> <p>14 A. Yes. What matters, specifically? Why</p> <p>15 don't you -- I want to make sure I understand</p> <p>16 specifically what you're referring to.</p> <p>17 Q. I am going to ask you a question. So do</p> <p>18 you remember this e-mail?</p> <p>19 A. I do remember this e-mail.</p> <p>20 Q. You're reporting to the executives,</p> <p>21 that's what PDO corporate means, right?</p> <p>22 A. No.</p> <p>23 Q. What does PDO corporate mean?</p> <p>24 A. PDO corporate usually would mean</p>	<p style="text-align: right;">Page 139</p> <p>1 Q. Specifically the Cash America decision?</p> <p>2 A. Yes, at the appellate level, yes.</p> <p>3 Q. And that's where Pennsylvania -- the</p> <p>4 decision of the Pennsylvania Banking</p> <p>5 Department to assert jurisdiction over</p> <p>6 internet lenders was affirmed by the high</p> <p>7 courts of Pennsylvania?</p> <p>8 A. So I don't think I can adopt your words,</p> <p>9 because I think the actual language in the</p> <p>10 opinion is much more specific about the</p> <p>11 interpretation of what doing business in the</p> <p>12 Commonwealth is, as it relates to state law,</p> <p>13 that it did not address federal law, it did</p> <p>14 not address preemption, it did not address</p> <p>15 what banks do in the state, and it did not</p> <p>16 address tribal lending law.</p> <p>17 Q. And for that reason, you said to the</p> <p>18 employees after reading the decision that our</p> <p>19 diversification strategy is indeed paying off,</p> <p>20 correct?</p> <p>21 A. That's exactly what it says.</p> <p>22 Q. And what you meant by that is, we may</p> <p>23 not be able to do Payday One in Pennsylvania,</p> <p>24 but we can still use ThinkCash.</p>
<p style="text-align: right;">Page 138</p> <p>1 everyone at Payday One.</p> <p>2 Q. And that would be --</p> <p>3 A. -- every employee.</p> <p>4 Q. Every employee of Payday One?</p> <p>5 A. Correct.</p> <p>6 Q. And at that point in time, that was the</p> <p>7 company now known as Think Finance?</p> <p>8 A. I don't know, because it says PDO --</p> <p>9 yeah, it probably should, yes. My signature</p> <p>10 is at Thinkcash.com.</p> <p>11 Q. So this would just happen to be --</p> <p>12 A. I think it would be ThinkCash, not Think</p> <p>13 Finance.</p> <p>14 Q. Right. At the time the company was</p> <p>15 called ThinkCash, right?</p> <p>16 A. That's correct.</p> <p>17 Q. So your -- so this was basically a</p> <p>18 transmittal to a wide audience. This wasn't</p> <p>19 just the top execs?</p> <p>20 A. That's correct.</p> <p>21 Q. And you're reporting on one of the</p> <p>22 Pennsylvania Appellate Court Rulings that we</p> <p>23 talked about before, correct?</p> <p>24 A. Yes.</p>	<p style="text-align: right;">Page 140</p> <p>1 MR. SHELDON: Objection.</p> <p>2 MR. SCHEFF: Object to the</p> <p>3 form. You can answer the question.</p> <p>4 THE WITNESS: What I meant by</p> <p>5 that, and I'm sure you understand, there were</p> <p>6 kind of two functions that we were doing at</p> <p>7 this time. One was as a direct lender, and we</p> <p>8 were making Payday One loans in the State of</p> <p>9 Pennsylvania. And the other was as a service</p> <p>10 provider to banks that were making loans</p> <p>11 subject to federal banking law. The First</p> <p>12 Bank of Delaware and Urban Trust Bank.</p> <p>13 BY MR. ACKELSBURG:</p> <p>14 Q. As a result of the ruling, Payday One</p> <p>15 turned off -- the Payday One lending was</p> <p>16 turned off in Pennsylvania, correct?</p> <p>17 A. That's right.</p> <p>18 Q. But you filled the gap, I think to use</p> <p>19 your words?</p> <p>20 A. Where does it -- oh, we will be filling</p> <p>21 the gap, okay, see it.</p> <p>22 Q. Filling the gap with the ThinkCash</p> <p>23 product, correct?</p> <p>24 A. It says with these products.</p>

<p style="text-align: right;">Page 141</p> <p>1 Q. Right. Do you know if the -- so let me 2 ask you this: So Think Finance, after the 3 ruling, continued to market the ThinkCash 4 product in Pennsylvania for First Bank of 5 Delaware? 6 A. So I can tell you that because that 7 ThinkCash, pursuant to its agreement with the 8 banking partner lenders, continue to provide 9 services for the banks and obviously every 10 marketing material that was sent to 11 Pennsylvania would have been reviewed and 12 approved by the lender. 13 Q. But my question was, am I right that 14 ThinkCash continued to market in Pennsylvania 15 for First Bank of Delaware, after this 16 decision came down? 17 A. Yes, because -- yes. 18 Q. And it also continued to collect 19 payments from Pennsylvania borrowers on 20 account of ThinkCash loans? 21 MR. SHELDON: Objection to 22 form. Object to the use of the word, 23 collects. Witness can answer if she can. 24 THE WITNESS: Yeah, I think I</p>	<p style="text-align: right;">Page 143</p> <p>1 A. I don't think I would adopt those words, 2 oversee those collection efforts. In fact, I 3 would probably have to look back to the 4 contract to see what it said exactly the role 5 was with Think Finance overseeing the vendors, 6 which by the way the FDIC had suggested the 7 bank hire rather than have Think Finance do it 8 ourselves. 9 Q. Be more specific, what are you referring 10 to there? 11 A. Well, in the first version I would call 12 it version one of ThinkCash, the First Bank of 13 Delaware was going through an examination. 14 And the examiners suggested or we understand 15 it was their suggestion from First Bank of 16 Delaware, that they were not comfortable with 17 Think Finance doing collections and customer 18 service on behalf of the bank. 19 So as a result, these duties 20 were contracted for by the bank, and that was 21 the version two of the Think Finance product, 22 which was done as a result of guidance and 23 oversight of the FDIC with First Bank of 24 Delaware.</p>
<p style="text-align: right;">Page 142</p> <p>1 need to lay a little bit of ground work for 2 this. The way these relationships were 3 established was that the bank hired, as an 4 agent for the bank, a collection group. That 5 contract was between the collection group and 6 the bank. 7 So ThinkCash never collected 8 anything. The bank through its vendor 9 collected payments on ThinkCash loans, that 10 the bank made. 11 Q. So the ACH at that point, in the 12 ThinkCash period, was actually done by First 13 Bank of Delaware, correct? 14 A. I don't remember. I think that's 15 correct, but I couldn't swear to it. I would 16 have to go and look it up. 17 Q. What about the -- First Bank of Delaware 18 had contracts with regard to -- had vendor 19 contracts with collection agencies, right? 20 A. Yes. 21 Q. Wasn't it Think Finance's job as part of 22 its contractual relationship with First Bank 23 of Delaware, to oversee those collection 24 efforts?</p>	<p style="text-align: right;">Page 144</p> <p>1 Q. Version one as you describe it, that was 2 between, as I recall the companies that -- the 3 Think Finance companies were TC Loan and TC 4 Financial. Do you remember that? 5 A. I don't remember. 6 Q. Am I right that in the original version 7 shortly after the loans were made, I think on 8 a daily basis, the loans were actually 9 purchased by Think Finance from First Bank of 10 Delaware, right? 11 A. Yeah, I think it was a whole loan sale, 12 much like you see in auto finance or credit 13 cards. 14 Q. Right. So on a daily basis -- again, 15 this is the original concept, on a daily basis 16 the loan was originated by First Bank of 17 Delaware, but every business day the loans 18 were then transferred to Think Finance? 19 A. No, I don't think it was every business 20 day. And I would actually have to refer, 21 because it has been quite some time, I think 22 there was a lag, I'm not sure how long that 23 lag was. And I actually have to say now that 24 I don't know if there was any period of time</p>

<p style="text-align: right;">Page 145</p> <p>1 that we actually operated under that version 2 one before we revised it to sell the 3 participation interest. 4 Q. Would it be helpful if you saw the 5 initial participation agreement? 6 A. No, because I would have to line it up 7 with when actually First Bank of Delaware, the 8 first loan that was made with them, and I 9 don't remember when that is. And I don't 10 know, if you have a document that says that, 11 that might help me. But I know there were 12 various versions of the agreements. 13 Q. I apologize, this one's a bear. For 14 clarity of the record, let's assign this a 15 number, P-406. But I believe it was 16 previously introduced as P-103. We will use 17 the 406 today. 18 - - - 19 (Whereupon Exhibit P-406 was 20 marked for identification.) 21 - - - 22 BY MR. ACKELSBURG: 23 Q. It will also help you in situating this, 24 the FDIC cease and desist was October 2008.</p>	<p style="text-align: right;">Page 147</p> <p>1 that was produced and it appears to be all 2 that exists. 3 MR. SHELDON: Ms. Cutrona, I 4 know you're trying to refresh your 5 recollection on this. This document is 6 unsigned, but it appears to be a version that 7 was produced in this litigation. If you can 8 use the document to actual accurately refresh 9 your recollection, please do. 10 If you have any concerns, 11 please be clear for the record what those 12 concerns are. 13 THE WITNESS: I do have to 14 say that because I know what occurred 15 generally at this time, there were a lot of 16 different versions of the contracts. And 17 things changed quite a bit. 18 BY MR. ACKELSBURG: 19 Q. Do you remember when it started out as a 20 whole loan purchase and then it was changed to 21 buy-in participations? 22 A. I do know that contractually the 23 original document did call for that, but as I 24 said before, I'm not sure that Go Live -- I'm</p>
<p style="text-align: right;">Page 146</p> <p>1 A. That's fine. I'm sure there were, 2 before that time, examinations. In fact, I 3 know there were. And I don't think the two 4 are related. 5 Q. Okay. 6 A. Rather than go through this entire 7 document which outside counsel produced and I 8 had minimal involvement with, do you want to 9 point me to the area that you have specific 10 questions. 11 Q. Yeah, sure. Why don't you turn to the 12 fourth page. 13 MR. SHELDON: Irv, I am 14 looking here at page 26, which is a signature 15 page. And I see this document is you know 16 executed are you making representation that 17 this is the final document. 18 MR. ACKELSBURG: Well, this 19 was what was produced. I don't think I have 20 one with signatures. I think we actually -- I 21 think this might have actually been -- I think 22 this was the Lutes deposition. This was very 23 early, or Rogenski. Any way, I think we dealt 24 with this back then. This was the version</p>	<p style="text-align: right;">Page 148</p> <p>1 not sure that the bank actually lent under 2 that prior version before they went through 3 one of their many consultations with the FDIC, 4 where the FDIC asked for the program to be 5 restructured. 6 Q. Okay. So you do recall though, that 7 there were restructurings that occurred at the 8 behest of FDIC? 9 A. At behest of First Bank of Delaware, 10 yes. 11 Q. And as communicated to you by First Bank 12 of Delaware, it was because of what their 13 examiners told them? 14 A. Generally, yes. 15 Q. How did the initial connection -- how 16 was the initial connection made with First 17 Bank of Delaware? 18 A. As I recall, it was a Sun Trade 19 Association meeting or a meeting, some 20 conference. And I think it might have been in 21 Las Vegas, but I can't recall for sure. 22 Q. This is an industry conference? 23 A. Yes. 24 Q. And there was some interaction -- were</p>

<p style="text-align: right;">Page 149</p> <p>1 you there at that conference?</p> <p>2 A. Yes, I was.</p> <p>3 Q. Was it Alonzo Primus you met with? Who</p> <p>4 was the First Bank of Delaware person you met</p> <p>5 with?</p> <p>6 A. I think it was Alonzo Primus.</p> <p>7 Q. If you look at the document, this master</p> <p>8 participation agreement, you will see that</p> <p>9 your -- it indicates you as being the -- you</p> <p>10 can look at page -- if you look at page 19 and</p> <p>11 20, it says who the pertinent people are to</p> <p>12 get notices.</p> <p>13 A. Okay. I was looking at page 14 of the</p> <p>14 second document. Is there more than one</p> <p>15 document in here?</p> <p>16 MR. SHELDON: There's a</p> <p>17 document and then there's several exhibits.</p> <p>18 He's referring to -- if you start at the very</p> <p>19 beginning and then start going back to the</p> <p>20 page numbers at the bottom. The first page</p> <p>21 you get to is the one he's talking about.</p> <p>22 THE WITNESS: Okay. The</p> <p>23 first page, 19.</p> <p>24 MR. SHELDON: Your name is on</p>	<p style="text-align: right;">Page 151</p> <p>1 A. Okay.</p> <p>2 Q. You see there is a list of excluded</p> <p>3 states that the bank will not make loans in</p> <p>4 its following states, do you see that?</p> <p>5 A. Uh-huh.</p> <p>6 Q. And you might have touched on this</p> <p>7 already, but can we agree that with regard to</p> <p>8 the ThinkCash product, it was First Bank of</p> <p>9 Delaware that made all of the decisions with</p> <p>10 regard to which states that the loans would be</p> <p>11 offered in?</p> <p>12 A. So I'm not sure about that.</p> <p>13 Q. Do you recall this list -- what is it</p> <p>14 you're not sure about?</p> <p>15 A. I'm not sure that it was solely based on</p> <p>16 First Bank of Delaware's recommendation.</p> <p>17 Q. That Think Finance might have had some</p> <p>18 say in the state that they were working in?</p> <p>19 A. I think that would call for privileged</p> <p>20 information.</p> <p>21 Q. I am talking about discussions with</p> <p>22 First Bank of Delaware though. I am not</p> <p>23 asking your discussions with Ken Rees. I am</p> <p>24 talking about your discussions with Rick</p>
<p style="text-align: right;">Page 150</p> <p>1 page 20.</p> <p>2 BY MR. ACKELSBERG:</p> <p>3 Q. Do you see that?</p> <p>4 A. Yes.</p> <p>5 Q. You see that on page 19 the lawyer for</p> <p>6 First Bank of Delaware is Richard Eckman?</p> <p>7 A. Yes.</p> <p>8 Q. Is this the first time that you met Rick</p> <p>9 Eckman -- was it through the First Bank of</p> <p>10 Delaware deal?</p> <p>11 A. I think that's probably right, yes.</p> <p>12 Q. And throughout the relationship that</p> <p>13 Think Finance had with First Bank of Delaware</p> <p>14 was Rick Eckman, counsel -- with regard to the</p> <p>15 transaction, the relationship between Think</p> <p>16 Finance and First Bank of Delaware?</p> <p>17 A. He was attorney to First Bank of</p> <p>18 Delaware. There may have been other attorneys</p> <p>19 too, but he was one of them.</p> <p>20 Q. If you look all of the way at the back</p> <p>21 of the document, it would be easier if you</p> <p>22 refer to the Bates number.</p> <p>23 A. Okay.</p> <p>24 Q. It's 974.</p>	<p style="text-align: right;">Page 152</p> <p>1 Eckman.</p> <p>2 A. It would be based on my legal analysis.</p> <p>3 Q. Well, I'm not asking for the legal</p> <p>4 analysis. I'm saying, was there a time when</p> <p>5 you and Rick Eckman actually discussed which</p> <p>6 states that the product would be offered in?</p> <p>7 A. So as I recall, the bank had asked for</p> <p>8 some legal analysis to be done, that Mr.</p> <p>9 Eckman did.</p> <p>10 Q. Okay. And he did that for First Bank of</p> <p>11 Delaware?</p> <p>12 A. Yes.</p> <p>13 Q. Were you also doing independent analysis</p> <p>14 or were you just relying on Mr. Eckman's</p> <p>15 analysis?</p> <p>16 A. I would say that I was also doing</p> <p>17 independent analysis.</p> <p>18 Q. Did you participate in the decision at</p> <p>19 the outset of the program of which states to</p> <p>20 market the loans in?</p> <p>21 MR. SHELDON: I'm going to</p> <p>22 give you an instruction here, Ms. Cutrona. If</p> <p>23 Mr. Ackelsberg is referring to participate in</p> <p>24 the decision in terms of discussions with</p>

<p style="text-align: right;">Page 153</p> <p>1 First Bank of Delaware or Mr. Eckman, who was</p> <p>2 First Bank of Delaware's counsel, you can</p> <p>3 answer.</p> <p>4 MR. ACKELSBURG: That's all</p> <p>5 I'm asking.</p> <p>6 MR. SHELDON: So with that</p> <p>7 clarification, you can answer, Ms. Cutrona.</p> <p>8 THE WITNESS: Yes, I</p> <p>9 participated in discussions.</p> <p>10 BY MR. ACKELSBURG:</p> <p>11 Q. Was that from the beginning of the</p> <p>12 program?</p> <p>13 A. That would be hard for me to say, and</p> <p>14 it's because this document -- I think the</p> <p>15 draft on it or the date is January 23rd of</p> <p>16 2007. I had just begun in July of 2006. My</p> <p>17 major focus was on getting those state</p> <p>18 licenses for the direct Payday One lending</p> <p>19 product. And this document, as I referred</p> <p>20 earlier, I could tell by this number, it was</p> <p>21 not drafted by me.</p> <p>22 Q. The analysis that Mr. Eckman did for</p> <p>23 First Bank of Delaware, was that used later to</p> <p>24 decide which states to operate in for the</p>	<p style="text-align: right;">Page 155</p> <p>1 long time.</p> <p>2 MR. SHELDON: Ms. Cutrona,</p> <p>3 what year would it have been shared with you,</p> <p>4 do you think?</p> <p>5 THE WITNESS: 2006, maybe.</p> <p>6 MR. ACKELSBURG: We're</p> <p>7 looking at 2007. If it doesn't exist, it</p> <p>8 doesn't exist.</p> <p>9 BY MR. ACKELSBURG:</p> <p>10 Q. Did Mr. Eckman explain in that document</p> <p>11 why he was recommending that First Bank of</p> <p>12 Delaware operate in Pennsylvania, but not in</p> <p>13 New York?</p> <p>14 A. No, I don't think he explained that in</p> <p>15 the document.</p> <p>16 Q. What did he explain in the document?</p> <p>17 A. It was more of a recitation of state law</p> <p>18 and federal preemption and applicability of</p> <p>19 state law.</p> <p>20 Q. At that point in time, in the 2007 time</p> <p>21 period, do you remember when CashCall was sued</p> <p>22 by the West Virginia Attorney General?</p> <p>23 A. I do remember that.</p> <p>24 Q. And the attorney general's position,</p>
<p style="text-align: right;">Page 154</p> <p>1 tribal product?</p> <p>2 MR. SHELDON: Ms. Cutrona, if</p> <p>3 you can answer that question without revealing</p> <p>4 legal analysis that you performed for Think</p> <p>5 Finance in your role as general counsel, you</p> <p>6 can.</p> <p>7 THE WITNESS: I can't answer</p> <p>8 that question.</p> <p>9 BY MR. ACKELSBURG:</p> <p>10 Q. You said Rick Eckman did an analysis for</p> <p>11 the bank. Was that in writing?</p> <p>12 A. I believe it was, yes.</p> <p>13 Q. And it was a state-by-state analysis?</p> <p>14 A. Yes, it was.</p> <p>15 Q. And it was shared with you?</p> <p>16 A. Yes.</p> <p>17 Q. I don't believe that was a document that</p> <p>18 was produced.</p> <p>19 MR. SCHEFF: Maybe it doesn't</p> <p>20 exist anymore.</p> <p>21 MR. ACKELSBURG: Do you know</p> <p>22 if it exists?</p> <p>23 THE WITNESS: I don't know.</p> <p>24 I've been away from Think Finance for a pretty</p>	<p style="text-align: right;">Page 156</p> <p>1 the West Virginia Attorney General's position</p> <p>2 at that time was that, notwithstanding</p> <p>3 federal preemption, that in the judgement of</p> <p>4 the West Virginia Attorney General's Office,</p> <p>5 that CashCall was the true lender in that</p> <p>6 arrangement; and that therefore federal</p> <p>7 preemption did not apply. That was the</p> <p>8 position taken in that litigation, correct?</p> <p>9 A. So I can't adopt your exact words, but I</p> <p>10 believe in general that was the position of</p> <p>11 the West Virginia AG's office.</p> <p>12 Q. So at the time that you were making</p> <p>13 loans --</p> <p>14 A. Remember, I didn't make loans.</p> <p>15 Q. Yes, I'm sorry. I'm going to change</p> <p>16 that. At the time that the ThinkCash loans</p> <p>17 were being offered to consumers, you were</p> <p>18 aware that certain states believed that the</p> <p>19 federal banking preemption would not prevent</p> <p>20 the state from enforcement action, right?</p> <p>21 MR. SHELDON: Object to form.</p> <p>22 I'm not sure I understand it, but the witness</p> <p>23 can answer if she can and if it doesn't reveal</p> <p>24 any legal analysis that she did in her role as</p>

<p style="text-align: right;">Page 157</p> <p>1 in-house counsel at Think Finance.</p> <p>2 MR. HERMAN: I'm also going</p> <p>3 to object to form and say that it assumes</p> <p>4 facts that are not of record.</p> <p>5 BY MR. ACKELSBURG:</p> <p>6 Q. You can answer now.</p> <p>7 A. Can you repeat the question, please?</p> <p>8 - - -</p> <p>9 (Whereupon the Court Reporter</p> <p>10 read back the pending question.)</p> <p>11 - - -</p> <p>12 THE WITNESS: I'm aware that</p> <p>13 states believed that federal preemption did</p> <p>14 not apply.</p> <p>15 BY MR. ACKELSBURG:</p> <p>16 Q. One of those states was West Virginia,</p> <p>17 correct?</p> <p>18 A. I'm aware that that was what West</p> <p>19 Virginia thought, evidently, because I brought</p> <p>20 the lawsuit.</p> <p>21 Q. That's why West Virginia was on Mr.</p> <p>22 Eckman's list, correct?</p> <p>23 MR. HERMAN: Object to form,</p> <p>24 assumes facts.</p>	<p style="text-align: right;">Page 159</p> <p>1 Q. Who was CashCall's bank at the time?</p> <p>2 A. I do not know.</p> <p>3 Q. You don't remember it being First Bank</p> <p>4 of Delaware?</p> <p>5 A. No, I don't.</p> <p>6 Q. What I'm asking is, wasn't Mr. Eckman --</p> <p>7 you said that you got this state by state</p> <p>8 analysis of the law. One of the things that</p> <p>9 Mr. Eckman was analyzing, was the risk of</p> <p>10 operating in a particular state and the risk</p> <p>11 of state enforcement, right?</p> <p>12 A. That's right. But I don't know what the</p> <p>13 timing was of that versus the litigation that</p> <p>14 was going on in West Virginia.</p> <p>15 Q. I'm just saying, you were aware of it;</p> <p>16 he would have been aware of it, right?</p> <p>17 A. You would have to ask him --</p> <p>18 Q. I know that.</p> <p>19 A. We're both making assumptions here.</p> <p>20 Q. But in the memo, Mr. Eckman was not only</p> <p>21 analyzing the substantive law in the state,</p> <p>22 but also the likelihood of enforcement by the</p> <p>23 state?</p> <p>24 A. Is there a memo?</p>
<p style="text-align: right;">Page 158</p> <p>1 THE WITNESS: I don't know</p> <p>2 that I can answer that question, because I</p> <p>3 didn't create the list, the bank did.</p> <p>4 MR. SHELDON: I've been</p> <p>5 presuming something, so I haven't been</p> <p>6 objecting. But I presume all of your</p> <p>7 questions along this line are in relation to</p> <p>8 CashCall specifically, and that she's aware</p> <p>9 that that is the position that they took with</p> <p>10 regards to CashCall, not with regard to say</p> <p>11 all lending made by preemption, right?</p> <p>12 MR. ACKELSBURG: No, that's</p> <p>13 not my question.</p> <p>14 THE WITNESS: Well, that's</p> <p>15 very important, because that's how I've been</p> <p>16 answering the questions.</p> <p>17 BY MR. ACKELSBURG:</p> <p>18 Q. I will be more than happy to clarify.</p> <p>19 A. Thank you.</p> <p>20 Q. Let's just start -- you understood that</p> <p>21 in 2007, the West Virginia Attorney General</p> <p>22 went after CashCall for its bank model</p> <p>23 product, right?</p> <p>24 A. Yes.</p>	<p style="text-align: right;">Page 160</p> <p>1 MR. SHELDON: Ms. Cutrona,</p> <p>2 he's referring to -- there was deposition</p> <p>3 testimony earlier where you talked about Mr.</p> <p>4 Eckman providing a memo or analysis specific</p> <p>5 to the FBD program. I think he's going back</p> <p>6 and talking about that memo again.</p> <p>7 THE WITNESS: I'm not sure</p> <p>8 it's a memo, but anyway, what's the question.</p> <p>9 BY MR. ACKELSBURG:</p> <p>10 Q. So you've got a written memo and you</p> <p>11 also had discussions with Mr. Eckman about</p> <p>12 what states to operate in, correct?</p> <p>13 MR. SHELDON: Object to form.</p> <p>14 THE WITNESS: There was an</p> <p>15 analysis provided and discussions occurred.</p> <p>16 BY MR. ACKELSBURG:</p> <p>17 Q. And part of the analysis that he</p> <p>18 provided to you was about the enforcement</p> <p>19 policy of the particular state, correct?</p> <p>20 A. I would have to look at what he said</p> <p>21 about West Virginia in the document.</p> <p>22 Q. But you would expect him to be looking</p> <p>23 not only at the substantive law, but potential</p> <p>24 enforcement problems in a particular state.</p>

<p style="text-align: right;">Page 161</p> <p>1 That's part of what you would have expected</p> <p>2 him to provide, right?</p> <p>3 MR. SCHEFF: Objection, calls</p> <p>4 for speculation as to what someone else did.</p> <p>5 You can ask her whether she knows, and she can</p> <p>6 answer that question.</p> <p>7 THE WITNESS: Again, I don't</p> <p>8 know the timing of that. So if it was after</p> <p>9 CashCall, I'm assuming, I don't know, it was</p> <p>10 covered. If it was before, I don't know.</p> <p>11 BY MR. ACKELSBURG:</p> <p>12 Q. And if the Minnesota or let's say the</p> <p>13 Massachusetts AG had issued a CID or filed a</p> <p>14 lawsuit in the area of high-rate lending, it's</p> <p>15 possible that that would have been part of</p> <p>16 what Mr. Eckman would be looking at in</p> <p>17 deciding not to be in Massachusetts, correct?</p> <p>18 MR. SHELDON: Objection,</p> <p>19 calls for speculation. Witness can testify as</p> <p>20 to things within her knowledge. Ms. Cutrona,</p> <p>21 you can answer.</p> <p>22 THE WITNESS: You're asking</p> <p>23 me to guess what was in a document that he</p> <p>24 covered, and I cannot guess. If I got the</p>	<p style="text-align: right;">Page 163</p> <p>1 for this agreement.</p> <p>2 Q. Do you remember TC Loan registering with</p> <p>3 the State of Pennsylvania as a loan broker?</p> <p>4 A. Yes, I do.</p> <p>5 Q. Why did Think Finance do that?</p> <p>6 A. So I recall very specifically that</p> <p>7 when -- as I refer to version one of the way</p> <p>8 the program was supposed to work, where Think</p> <p>9 Finance would be marketing and before it was</p> <p>10 divided up, that Think Finance needed -- he's</p> <p>11 calling for my analysis. I'm not sure I can</p> <p>12 answer.</p> <p>13 MR. SHELDON: Ms. Cutrona, if</p> <p>14 there is, for instance, a communication with a</p> <p>15 third party, like the Commonwealth of</p> <p>16 Pennsylvania that informed your decision</p> <p>17 whether or not to get a license or apply for a</p> <p>18 license, please do provide that information.</p> <p>19 If the decision to apply for</p> <p>20 a license was made and informed solely as a</p> <p>21 result of your internal legal analysis, then</p> <p>22 you should note that and I'll instruct you not</p> <p>23 to answer.</p> <p>24 THE WITNESS: So what I can</p>
<p style="text-align: right;">Page 162</p> <p>1 document in front of me, that's different, but</p> <p>2 I can't guess.</p> <p>3 BY MR. ACKELSBURG:</p> <p>4 Q. Was Think using any outside regulatory</p> <p>5 counsel of its own in 2007 with regard to the</p> <p>6 states that -- where the ThinkCash product</p> <p>7 would be marketed?</p> <p>8 A. Yeah, I think during that time period</p> <p>9 Claudia Callaway provided regulatory guidance</p> <p>10 in general to the company?</p> <p>11 Q. Before 2009?</p> <p>12 A. Yes.</p> <p>13 Q. Now the parties to the original deal</p> <p>14 were TC -- the Think Finance parties were TC</p> <p>15 Loan Services and TC Financial. Do you</p> <p>16 remember why those entities were used?</p> <p>17 A. No.</p> <p>18 Q. Do you know if they were created for</p> <p>19 purposes of the transaction of First Bank of</p> <p>20 Delaware?</p> <p>21 A. I did know that TC Loan Service, and</p> <p>22 it's one, not services; was the entity that</p> <p>23 employed us. It was on the paychecks. But I</p> <p>24 don't know that it was created specifically</p>	<p style="text-align: right;">Page 164</p> <p>1 say is that where perhaps the law is not</p> <p>2 clear, I often times will call up a regulatory</p> <p>3 agency to discuss with them whether or not</p> <p>4 certain licensing was needed. In fact, with</p> <p>5 regard to -- I think it may have been in the</p> <p>6 fall of 20 -- I am not sure what year it would</p> <p>7 have been, but prior to the program being --</p> <p>8 for ThinkCash loans being offered in</p> <p>9 Pennsylvania, a letter went to the</p> <p>10 Commonwealth and it described the program with</p> <p>11 the parties that were involved in the program.</p> <p>12 It described the services that Think would be</p> <p>13 providing to the bank. And the question was,</p> <p>14 do we need this -- I think it's the loan</p> <p>15 brokers services license? I am not even sure</p> <p>16 of the exact name. So that went out.</p> <p>17 I think, I don't know if it</p> <p>18 was Cater Frantz or Jim Kaiser. Jim Kaiser</p> <p>19 was usually who I would talk to regarding any</p> <p>20 question I had in Pennsylvania. And I called</p> <p>21 in January, after that letter was sent in the</p> <p>22 fall, to follow up to see what he said. And</p> <p>23 he said the only license you need, and again</p> <p>24 this is in version one, would be this loan</p>

<p style="text-align: right;">Page 165</p> <p>1 broker license. And we have no issues with</p> <p>2 the program.</p> <p>3 Q. That was early on right, in 2007?</p> <p>4 A. I really -- I would have to look at the</p> <p>5 date. I don't know -- I know it was the fall.</p> <p>6 It makes sense to me that it was either the</p> <p>7 fall of '06 and January of '07; or it could</p> <p>8 have been the fall of '07 and January of '08.</p> <p>9 Q. That was before the Cash America</p> <p>10 decision in '09 that's referenced in your</p> <p>11 e-mail to PDO corporate, right?</p> <p>12 A. Let me look and see when that was. I</p> <p>13 don't like to guess.</p> <p>14 MR. SHELDON: I think after</p> <p>15 this line of questioning it would probably be</p> <p>16 a good lunch time.</p> <p>17 BY MR. ACKELSBURG:</p> <p>18 Q. Let me finish this document.</p> <p>19 A. What document was that? 405, right</p> <p>20 here. Yeah, so this was in -- I have to look</p> <p>21 and see when the documents were. This was in</p> <p>22 July of 2009 that I sent this. So that's</p> <p>23 correct.</p> <p>24 Wait, let's have the</p>	<p style="text-align: right;">Page 167</p> <p>1 appellate decision that I reference in my July</p> <p>2 2009, e-mail, yes.</p> <p>3 BY MR. ACKELSBURG:</p> <p>4 Q. Am I right that the Pennsylvania Banking</p> <p>5 Department told ThinkCash to cease marketing</p> <p>6 the product in Pennsylvania?</p> <p>7 A. I don't think you're right about that.</p> <p>8 I remember -- this is where it's a little</p> <p>9 tricky, because ThinkCash was the corporate</p> <p>10 name of the company and also the product that</p> <p>11 First Bank of Delaware marketed. And I recall</p> <p>12 a letter coming to the company, ThinkCash,</p> <p>13 from Pennsylvania. But as I recall, it was</p> <p>14 referencing the payday lending product that</p> <p>15 ThinkCash made directly into the Commonwealth</p> <p>16 of Pennsylvania. I could be wrong, but that's</p> <p>17 what I recall.</p> <p>18 Q. So I want to show you a document that</p> <p>19 has been previously marked as Exhibit P-373</p> <p>20 and just ask if this refreshes your</p> <p>21 recollection?</p> <p>22 A. Yes, it doesn't change what I said</p> <p>23 though.</p> <p>24 Q. Why is that?</p>
<p style="text-align: right;">Page 166</p> <p>1 question. I think you asked me if this was</p> <p>2 after the decision or my call with Jim Kaiser</p> <p>3 was before.</p> <p>4 Q. Right.</p> <p>5 A. That's correct.</p> <p>6 Q. So just to summarize, for clarity of the</p> <p>7 record, in roughly 2006 or 2007; you remember</p> <p>8 applying for a loan broker license, you</p> <p>9 remember a conversation with someone in the</p> <p>10 banking department, right?</p> <p>11 A. Yes, either '06/'07 or '07/'08.</p> <p>12 Q. But later in 2009 is when the Cash</p> <p>13 America decision came down, correct?</p> <p>14 A. In West Virginia.</p> <p>15 Q. No, I am talking about the Pennsylvania</p> <p>16 --</p> <p>17 A. Oh, in Pennsylvania, yes.</p> <p>18 Q. That's the -- I promise you this is the</p> <p>19 last, we will give you a break. And 2009 is</p> <p>20 when the Pennsylvania Supreme Court came down</p> <p>21 with the Cash America decision, correct?</p> <p>22 MR. SCHEFF: Object to the</p> <p>23 form.</p> <p>24 THE WITNESS: That's the</p>	<p style="text-align: right;">Page 168</p> <p>1 A. Because this request went to ThinkCash</p> <p>2 and it was regarding, in my mind, the Payday</p> <p>3 One product.</p> <p>4 Q. Where in this letter does it say it's</p> <p>5 about the Payday One product?</p> <p>6 A. Well, the reason I say that is because</p> <p>7 the actual lawsuit was about a Payday One</p> <p>8 product in this state, as I recall. So this</p> <p>9 was interpreted -- you're asking my</p> <p>10 interpretation, to be applicable to the Payday</p> <p>11 One product. And that's the way I read it.</p> <p>12 Q. Even though it was addressed to</p> <p>13 ThinkCash and never mentions the payday loan</p> <p>14 product?</p> <p>15 A. ThinkCash was the name of the</p> <p>16 corporation.</p> <p>17 Q. It was also the name of the company that</p> <p>18 had submitted a license to market the First</p> <p>19 Bank of Delaware product called ThinkCash,</p> <p>20 correct?</p> <p>21 A. That's right.</p> <p>22 Q. Your assumption was that when the</p> <p>23 Pennsylvania Department of Banking wrote to</p> <p>24 the company and said, stop, discontinue any</p>

<p style="text-align: right;">Page 169</p> <p>1 and all advertising targeting Pennsylvania 2 residents, they were concerned about the 3 Payday One product, not the product called 4 ThinkCash? 5 A. Yeah, let me walk you through this. 6 This letter was sent to ThinkCash in Fort 7 Worth. ThinkCash was the parent company of 8 the entity that was lending in Pennsylvania, 9 the payday product. And when it says that we 10 discontinue any and all advertising targeting 11 Pennsylvania residents, it's talking about 12 what ThinkCash, the corporate entity was doing 13 in Pennsylvania. It's not saying, ThinkCash, 14 the marketing that you're doing on behalf of 15 the bank, cease and desist. In fact, I think 16 the broker's license was probably renewed a 17 few times, as well. 18 To me this is -- you're 19 trying to conflate the two, and I don't think 20 -- that's not at all what this is regarding. 21 Q. Earlier in 2006, or '07 or '08, whenever 22 it was, that the company submitted an 23 application to register as a loan broker -- 24 A. Right.</p>	<p style="text-align: right;">Page 171</p> <p>1 Pennsylvania. Can we have a break now? 2 MR. ACKELSBERG: Yeah, we can 3 break. 4 VIDEOTAPE OPERATOR: End of 5 media unit number two, we're off the record at 6 12:08. 7 This is the beginning of 8 media unit number three, we're back on the 9 record at 12:48. 10 BY MR. ACKELSBERG: 11 Q. Ms. Cutrona, before we broke we were 12 talking about the First Bank of Delaware 13 relationship and the ThinkCash product. What 14 I would like to do is move the timeframe a 15 little forward now to the end of 2010, the 16 beginning of 2011 when work was being done to 17 develop a tribal installment loan product to 18 take the place of ThinkCash, do you remember 19 that? 20 A. I remember in that timeframe we did a 21 lot of research, but I wouldn't characterize 22 it as taking place at ThinkCash. 23 Q. You were looking, among other things, 24 for a place to put the customer base of</p>
<p style="text-align: right;">Page 170</p> <p>1 Q. And described the ThinkCash product -- 2 A. -- version one, not version two. 3 Q. At that time the license was in the name 4 of ThinkCash to market that product, right? 5 Is that the broker license, ThinkCash? 6 A. I don't know, I would have to look at 7 it. But I would like to clarify a few things, 8 because it's very important. ThinkCash, the 9 letter that went from ThinkCash would have 10 described version one of the product, okay, 11 not the way things were divided later on, 12 where you had a marketing entity working with 13 the bank -- 14 Q. Are you talking about Tailwinds -- 15 A. A decision sciences company working with 16 the bank. There may have been one or two 17 other agreements. So those were two 18 completely different structures. And so as I 19 recall, this license was really related to -- 20 in fact, it was, it was related to version one 21 of that, not the second version. 22 So of course I would not 23 interpret this letter to impact a bank product 24 that was being offered by a bank in</p>	<p style="text-align: right;">Page 172</p> <p>1 ThinkCash, right? Isn't that ultimately what 2 got transferred to Plain Green? 3 A. Those are your words, not my words. And 4 I do believe that the customers -- some of the 5 customers ended up taking out loans with Plain 6 Green, but I don't think all of them did. 7 Q. You do recall the previous time when the 8 tribal product was in its development stage? 9 A. Yes. 10 Q. During that period of time, Think 11 Finance called the prototype that it was 12 working on -- 13 MR. SCHEFF: Did you want to 14 supplement your answer? 15 THE WITNESS: I would like to 16 clarify something. 17 BY MR. ACKELSBERG: 18 Q. Go ahead. 19 A. I think early on, I don't even know when 20 it was, that maybe there was a discussion 21 between Ken and some of the board members 22 about a tribal product that would have been 23 early on at my tenure at Payday One. So I 24 think there was an initial discussion back</p>

<p style="text-align: right;">Page 173</p> <p>1 then. But to your point, what I recall is</p> <p>2 this one in late 2010.</p> <p>3 Q. So you do recall there was an earlier</p> <p>4 discussion around the period that Think was</p> <p>5 starting with First Bank of Delaware?</p> <p>6 A. I am told that there was one.</p> <p>7 Q. But you weren't party to those</p> <p>8 discussions?</p> <p>9 A. No.</p> <p>10 Q. You're correct, we're talking about the</p> <p>11 development work that went on about the tribal</p> <p>12 product at the end of 2010 and the beginning</p> <p>13 of 2011, okay? That's the timeframe we're</p> <p>14 focusing on?</p> <p>15 A. Yes.</p> <p>16 Q. I'm focusing on, when I say the</p> <p>17 development stage, I'm talking about the work</p> <p>18 that was done before there was a tribal</p> <p>19 partner signed up. Okay?</p> <p>20 A. Okay.</p> <p>21 Q. And you recall that one of the things</p> <p>22 that occurred back in that development stage</p> <p>23 was the creation of the GPLS fund, right?</p> <p>24 A. Yes, I think the GPLS -- yes, I am not</p>	<p style="text-align: right;">Page 175</p> <p>1 A. There was one meeting before a tribe was</p> <p>2 signed that I went to.</p> <p>3 Q. Was that the Butch Webb meeting?</p> <p>4 A. There was a meeting -- yes, it was with</p> <p>5 Butch Webb.</p> <p>6 Q. And roughly when did that happen?</p> <p>7 A. It was either November or December of</p> <p>8 that year.</p> <p>9 Q. Of 2010?</p> <p>10 A. Right.</p> <p>11 Q. What do you remember -- first of all,</p> <p>12 who made the connection with Butch Webb?</p> <p>13 A. I don't recall. The industry is pretty</p> <p>14 tight, and I don't know if we knew him -- if</p> <p>15 it was internally -- it came internally or if</p> <p>16 it came from someone outside the company.</p> <p>17 Q. But the decision was made to go meet</p> <p>18 with Butch?</p> <p>19 A. That's correct.</p> <p>20 Q. Who went with you?</p> <p>21 A. Let me see if I can remember, I know it</p> <p>22 was me, obviously; I believe Ken Rees went;</p> <p>23 Chris Lutes; Michelle Nguyen. I am not sure</p> <p>24 if Jason went, but I think that's probably who</p>
<p style="text-align: right;">Page 174</p> <p>1 exactly sure when that was created.</p> <p>2 Q. But that was created before there</p> <p>3 actually were tribes with signed participation</p> <p>4 agreements, correct?</p> <p>5 A. Yes.</p> <p>6 Q. And the GPL and the GPLS acronym stood</p> <p>7 for Great Plains Lending, right? That's where</p> <p>8 the GPL came from?</p> <p>9 A. I think that's right.</p> <p>10 Q. Because the prototype product that was</p> <p>11 being developed inhouse was called Great</p> <p>12 Plains Lending?</p> <p>13 A. I believe that was initially the ideas</p> <p>14 of our marketing department.</p> <p>15 Q. During that development stage of the</p> <p>16 product that was called Great Plains Lending</p> <p>17 by the marketing people, what role did you</p> <p>18 play in developing the product?</p> <p>19 A. I don't really recall. Well, I don't</p> <p>20 know what you're asking me specifically. Can</p> <p>21 we narrow down the timeframe maybe?</p> <p>22 Q. Sure, let's say -- first let me ask you</p> <p>23 this: Did you participate in any of the</p> <p>24 meetings with potential tribal partners?</p>	<p style="text-align: right;">Page 176</p> <p>1 went to that meeting.</p> <p>2 Q. What do you remember being discussed at</p> <p>3 the meeting?</p> <p>4 A. Well, I remember some of it would have</p> <p>5 been discussions by Cheryl Bove, which would</p> <p>6 have been Butch's counsel. So I don't think I</p> <p>7 can go into those.</p> <p>8 Q. Actually you can, because we're talking</p> <p>9 about conversations with a third party.</p> <p>10 MR. SHELDON: Ms. Cutrona,</p> <p>11 you're allowed to tell Mr. Ackelsberg about</p> <p>12 any conversations that you had with Mr. Webb</p> <p>13 or with Mr. Webb's counsel. We're not</p> <p>14 claiming privilege over those communications.</p> <p>15 THE WITNESS: So there was</p> <p>16 lots of discussion around really</p> <p>17 operationally, around the operations. And</p> <p>18 Butch -- which were located on the</p> <p>19 reservation, and Butch wanted to -- Mr. Webb</p> <p>20 wanted to walk around and show us where</p> <p>21 different things were done.</p> <p>22 So we kind of went on a</p> <p>23 little tour. And what was discussed,</p> <p>24 generally it was just at a high level, the</p>

<p style="text-align: right;">Page 213</p> <p>1 document that was sent at 4:54 p m. It talks 2 about the discussion a few weeks ago. And 3 again, what I want to be careful is that we 4 aren't conflating things here, because there 5 are lots of things that were going on. 6 MR. SHELDON: I think there 7 is a time zone issue going on too. They go 8 back and forth. 9 BY MR. ACKELSBURG: 10 Q. I think I understand what you're saying. 11 That in the communication with Mr. Lutes, on 12 the first page of 412, you're referencing a 13 conversation with Eckman that had occurred at 14 an earlier point in time a few weeks ago, 15 correct? 16 A. That's what it looks like. What it 17 looks like is that I talk about -- I did talk 18 to him a few weeks ago, and his concerns were 19 about something related to true lender. 20 Q. And you're saying that that conversation 21 that occurred several weeks in the past, in 22 that conversation he was functioning as 23 counsel for Think Finance; is that what you're 24 saying?</p>	<p style="text-align: right;">Page 215</p> <p>1 Chippewa Cree. 2 Q. You recall that in the deal with Plain 3 Green, the loans were funded in the first 4 instance by a loan from Stephen Haynes to 5 Plain Green, right? 6 A. That's my understanding. 7 Q. But that Stephen Haynes had an agreement 8 with Think Finance, where the same money that 9 he lent to the tribe, he borrowed from Think 10 Finance, right? 11 A. That's my understanding, that there was 12 a line of credit. 13 Q. Is that what Mr. Eckman was concerned 14 about, in his capacity as counsel for the 15 tribe, when he was communicating with you in 16 June of 2012 about wanting to take Haynes out 17 of the deal? 18 A. So I don't recall that that's what it 19 was regarding. 20 Q. Now with regard to the other two tribes, 21 the way they funded the loan was through a 22 reserve account provided by GPLS, correct? 23 MR. HAWS: Object to form. 24 THE WITNESS: I think that's</p>
<p style="text-align: right;">Page 214</p> <p>1 A. Yes. What I'm saying is as it relates 2 to a memo regarding true lender. 3 Q. But not with regard to removing Stephen 4 Haynes? 5 A. Well, those are your words, but I think 6 there was a comment that I'm reading that 7 says: That by removing Stephen, you weaken 8 GPLS's argument that -- then it says the -- it 9 is not considered the true lender. 10 So I believe that's all 11 related to the true lender issue. 12 Q. Was it at times hard to keep track of 13 who Rick Eckman was representing? 14 A. Not really. And the reason I say that 15 is because there were obviously occasions 16 where we had aligned interests, even when he 17 was representing the tribe. And obviously I 18 was of counsel for the service providers. 19 But, you know, I think as the documents show, 20 I'm sure you've seen them, there was quite a 21 bit of back and forth of the negotiations of 22 the documents and when the documents were 23 restructured with his representation of 24 Mobiloans, which will be Tunica Biloxi and the</p>	<p style="text-align: right;">Page 216</p> <p>1 accurate. 2 BY MR. ACKELSBURG: 3 Q. Just to summarize, at least in the early 4 days of the product -- 5 A. Which product? 6 Q. I am going to make that clear. With 7 regard to the early days of Plain Green, the 8 tribe funded the loans in the first instance 9 by money that came from Think Finance, but 10 went through Mr. Haynes first? 11 MR. HERMAN: Object to form. 12 THE WITNESS: So my 13 understanding, and I wasn't involved in these 14 discussions, but my understanding is Steve 15 Haynes represented himself to us. In fact, I 16 do know this, he represented himself to us as 17 a tribal expert. He had worked with 18 specifically the Chippewa Cree Tribe in the 19 past. He had entered into financing 20 agreements within specifically related to 21 their casino operations and with equipment 22 that they use in their casino. 23 So because of his expertise 24 and working with the tribe, he was involved in</p>

<p style="text-align: right;">Page 217</p> <p>1 the transaction as far as the financing for</p> <p>2 the tribe to make the loans.</p> <p>3 Q. He got the money to lend to the tribe</p> <p>4 via a credit agreement that he had with Think</p> <p>5 Finance, correct?</p> <p>6 MR. SCHEFF: Object to the</p> <p>7 form. You can answer the question.</p> <p>8 THE WITNESS: I know he got</p> <p>9 some money from an agreement that he had with</p> <p>10 Think Finance.</p> <p>11 BY MR. ACKELSBURG:</p> <p>12 Q. With regard to Great Plains Lending and</p> <p>13 Mobiloans, in contrast to that arrangement,</p> <p>14 the money to fund the loans came from GPLS,</p> <p>15 correct, through that reserve account?</p> <p>16 MR. HERMAN: Objection to</p> <p>17 form.</p> <p>18 MR. SHELDON: Object to form.</p> <p>19 The witness can answer if she knows the</p> <p>20 answer.</p> <p>21 THE WITNESS: I think that's</p> <p>22 the way it is. I need to be clear that I</p> <p>23 wasn't highly involved in the structure of</p> <p>24 these agreements.</p>	<p style="text-align: right;">Page 219</p> <p>1 BY MR. ACKELSBURG:</p> <p>2 Q. In looking at this, does this look</p> <p>3 familiar to you as a PowerPoint that</p> <p>4 accompanied an executive meeting at Think</p> <p>5 Finance?</p> <p>6 A. Yes.</p> <p>7 Q. Looking at page 22, there is reference</p> <p>8 to -- it says a revised Patton Boggs. Do you</p> <p>9 see that?</p> <p>10 A. Yes.</p> <p>11 Q. Is that reference to something that was</p> <p>12 called the Patton Boggs white paper?</p> <p>13 A. I don't know what that's referencing.</p> <p>14 Q. Do you remember something called the</p> <p>15 Patton Boggs white paper?</p> <p>16 A. Patton Boggs did a lot of work for</p> <p>17 Think, and I can't recall specific names of</p> <p>18 documents.</p> <p>19 - - -</p> <p>20 (Whereupon Exhibit P-414 was</p> <p>21 marked for identification.)</p> <p>22 - - -</p> <p>23 BY MR. ACKELSBURG:</p> <p>24 Q. I believe this already was marked. I</p>
<p style="text-align: right;">Page 218</p> <p>1 - - -</p> <p>2 (Whereupon Exhibit P-413 was</p> <p>3 marked for identification.)</p> <p>4 - - -</p> <p>5 BY MR. ACKELSBURG:</p> <p>6 Q. I am going to show you another one of</p> <p>7 these executive meeting PowerPoints. I'm</p> <p>8 really going to ask you very specific</p> <p>9 questions. You can obviously take the time</p> <p>10 you need. But I am not going to ask you</p> <p>11 anything about the bulk of this document. I</p> <p>12 guess what I'd like you to focus on, the pages</p> <p>13 starting 22, 22 and 23 and 24.</p> <p>14 A. The Bates number?</p> <p>15 Q. No, I'm looking at the PowerPoint page</p> <p>16 numbers.</p> <p>17 MR. SCHEFF: It's 938 and</p> <p>18 939.</p> <p>19 MR. SHELDON: Ms. Cutrona,</p> <p>20 let me know when you're done reviewing it. I</p> <p>21 think I need to have a brief conversation with</p> <p>22 you just so I can understand this document.</p> <p>23 VIDEOTAPE OPERATOR: Off the</p> <p>24 record at 2:07. Back on the record, 2:07.</p>	<p style="text-align: right;">Page 220</p> <p>1 believe we marked it previously. But in the</p> <p>2 event we didn't, I am going to stick with 414.</p> <p>3 I am going to tell you this</p> <p>4 was represented to us as the Patton Boggs</p> <p>5 white paper, it was produced. Do you recall</p> <p>6 this document?</p> <p>7 A. In general, yes, I do.</p> <p>8 Q. Do you remember the point in time that</p> <p>9 it was -- let me ask you this -- and it was</p> <p>10 done by Patton Boggs for Think Finance?</p> <p>11 A. Yes.</p> <p>12 Q. Was this done for purposes of the IPO?</p> <p>13 A. I'm not sure because I can't tell when</p> <p>14 it was done.</p> <p>15 Q. Right, there is no date on it.</p> <p>16 A. Yeah, I don't know.</p> <p>17 Q. Do you recall that it was used in the</p> <p>18 presentation to [REDACTED] in the [REDACTED] trip at</p> <p>19 the end of 2012; do you remember that?</p> <p>20 A. I know that there was a trip to [REDACTED]</p> <p>21 [REDACTED] but I was not on the trip. So if</p> <p>22 you're representing this particular document</p> <p>23 was used, then I would have to take your word</p> <p>24 for it. But that would be -- I have to say,</p>

<p style="text-align: right;">Page 221</p> <p>1 that would be unusual because in all of the</p> <p>2 presentations that I know Ken to do, it's</p> <p>3 PowerPoint only. He doesn't include Word</p> <p>4 documents.</p> <p>5 Q. Right, unless an investor specifically</p> <p>6 asked for something, right?</p> <p>7 A. Yes, but even in a presentation, I think</p> <p>8 there would be reference made to it. That's</p> <p>9 just in general, my working knowledge of the</p> <p>10 way Ken does things.</p> <p>11 Q. Can you turn to page 14? In the first</p> <p>12 full paragraph, right before Roman numeral</p> <p>13 three, do you see that?</p> <p>14 A. Is it the paragraph that says it's</p> <p>15 discussed further?</p> <p>16 Q. Yes.</p> <p>17 A. Yes.</p> <p>18 Q. And it states: While tribal sovereign</p> <p>19 immunity affords broad protection from</p> <p>20 enforcement of laws, immunity from enforcement</p> <p>21 should always be considered separately from</p> <p>22 general applicability of laws. Do you see</p> <p>23 that?</p> <p>24 A. Yes, I do.</p>	<p style="text-align: right;">Page 223</p> <p>1 related entities simply due to the ability to</p> <p>2 assert tribal sovereign immunity as a defense</p> <p>3 against enforcement. Do you see that?</p> <p>4 A. Yes.</p> <p>5 Q. Page 20.</p> <p>6 A. Did I ask this already, when this was</p> <p>7 done? Do we know when it was done?</p> <p>8 Q. We know it went to [REDACTED]. I can't</p> <p>9 tell you more than that.</p> <p>10 A. When was that?</p> <p>11 Q. I believe it was around December of</p> <p>12 2012.</p> <p>13 Do you see the sentence in</p> <p>14 the middle of page 20, underneath the indent,</p> <p>15 "Thus the Supreme Court has held that absent</p> <p>16 express federal law to the contrary, Indians</p> <p>17 going beyond reservation boundaries have</p> <p>18 generally been held subject to</p> <p>19 non-discriminatory state law otherwise</p> <p>20 applicable to all citizens of the state." You</p> <p>21 see that, right?</p> <p>22 A. Yes.</p> <p>23 Q. I think you told us before that you're</p> <p>24 not an expert in Indian law, right?</p>
<p style="text-align: right;">Page 222</p> <p>1 Q. Is that a principal that you agree with?</p> <p>2 A. I'm not a subject matter expert on</p> <p>3 tribal law. So I couldn't tell you whether I</p> <p>4 agreed with that or not.</p> <p>5 Q. But the idea that immunity from</p> <p>6 enforcement and what law governs the</p> <p>7 agreement, that's two separate legal issues,</p> <p>8 right?</p> <p>9 MR. SHELDON: Ms. Cutrona, he</p> <p>10 asked a legal opinion. Ms. Cutrona, if you</p> <p>11 can answer that legal opinion, you may; unless</p> <p>12 that answer would require you to divulge</p> <p>13 privileged legal analysis that you did during</p> <p>14 your time at Think Finance?</p> <p>15 THE WITNESS: Yeah, I don't</p> <p>16 think I can answer that question.</p> <p>17 BY MR. ACKELSBURG:</p> <p>18 Q. Look at page 16.</p> <p>19 A. Okay.</p> <p>20 Q. Do you see Roman numeral four?</p> <p>21 A. Yes.</p> <p>22 Q. The second sentence, which reads: It</p> <p>23 would be a non-sequitur to conclude that</p> <p>24 certain laws do not apply to tribes and</p>	<p style="text-align: right;">Page 224</p> <p>1 A. That's correct.</p> <p>2 Q. So that's why you went to Patton Boggs,</p> <p>3 because they are, correct?</p> <p>4 A. Ed Garris, yes.</p> <p>5 Q. If you turn to page 26, at the bottom</p> <p>6 the last paragraph: Congress is aware that</p> <p>7 state laws regulating payday lenders and other</p> <p>8 non-bank financial institutions may be largely</p> <p>9 unenforceable against Indian tribes due to</p> <p>10 their tribal sovereign immunity, and there</p> <p>11 have been efforts to make state statutes</p> <p>12 generally applicable through federal</p> <p>13 legislation. Do you see that?</p> <p>14 A. Yes, I see that.</p> <p>15 Q. There never was a statute passed by</p> <p>16 Congress to give tribal entities any power in</p> <p>17 the consumer lending area, has there been?</p> <p>18 MR. SHELDON: Objection to</p> <p>19 form.</p> <p>20 BY MR. ACKELSBURG:</p> <p>21 Q. Are you aware of there being any act of</p> <p>22 Congress that gives tribes that power?</p> <p>23 MR. HERMAN: Object to the</p> <p>24 form, to the extent that it misrepresents</p>

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

COMMONWEALTH OF :
PENNSYLVANIA :
Plaintiff :
:
VS. : CIVIL ACTION NUMBER
: 2:14-CV-07139
THINK FINANCE, INC., :
ET AL., :
Defendants :

APRIL 26, 2018

Videotaped deposition of STEPHEN SMITH, was taken pursuant to notice at 901 New York Avenue, NW, Washington, D.C., beginning at or about 9:00 a.m. before Jeannine Cancelliere, Court Reporter and Notary Public and David Levin, Videotape Operator, there being present.

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<p>1 ---</p> <p>2 E X H I B I T S</p> <p>3 ---</p> <p>4 EXHIBIT NO. DESCRIPTION PAGE</p> <p>5 P-229 Remediation Plan 221</p> <p>6 P-230 E-Mail Chain 223</p> <p>7 P-231 was not marked</p> <p>8 P-232 E-Mail Chain 226</p> <p>9 P-233 E-Mail Chain 231</p> <p>10 P-234 E-Mail Chain 236</p> <p>11 P-235 Document 239</p> <p>12 P-236 Document 239</p> <p>13 P-237 Weekly Call Document 242</p> <p>14 P-238 Production Document 245</p> <p>15 P-239 Complaint Document 258</p> <p>16 P-240 E-Mail Chain 268</p> <p>17 P-241 Complaint Template 272</p> <p>18 P-242 E-Mail 272</p> <p>19 P-59 and P-60 Referenced on Page 140</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p>	<p>1 MR. SHELDON: Matthew Sheldon</p> <p>2 representing the Think Finance defendants,</p> <p>3 joined today by Thomas Graber, general counsel</p> <p>4 of Think Finance.</p> <p>5 MR. SCHEFF: Richard Scheff for</p> <p>6 Kenneth E. Rees.</p> <p>7 MR. SHAPIRO: Dan Shapiro for</p> <p>8 the Victory Park defendants.</p> <p>9 MR. HAWS: Matthew Haws for the</p> <p>10 Victory Park defendants.</p> <p>11 MR. SHAW: Stephen Shaw for the</p> <p>12 Think Finance defendants.</p> <p>13 VIDEOTAPE OPERATOR: The court</p> <p>14 reporter is Jeannine Cancelliere. Can she now</p> <p>15 swear in the witness.</p> <p>16 - - -</p> <p>17 STEPHEN SMITH, after having been</p> <p>18 first duly sworn, was examined and testified</p> <p>19 as follows:</p> <p>20 - - -</p> <p>21 VIDEOTAPE OPERATOR: Please</p> <p>22 proceed, counsel.</p> <p>23 - - -</p> <p>24 EXAMINATION</p>
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<p>1 VIDEOTAPE OPERATOR: We're now</p> <p>2 on the record. My name is David Levin. I'm</p> <p>3 the videographer employed by On the Record.</p> <p>4 This is a video deposition in the United</p> <p>5 States District Court for the Eastern District</p> <p>6 of Pennsylvania, Civil Action Number</p> <p>7 14-7139-JCJ. Today's date is Thursday, April</p> <p>8 26th, 2018 and the video time is 9:00 a.m.</p> <p>9 This deposition is being held at 901 New York</p> <p>10 Avenue, Northwest, Ninth Floor, Washington,</p> <p>11 D.C., in the matter of the Commonwealth of</p> <p>12 Pennsylvania by Attorney Josh Shapiro versus</p> <p>13 Think Finance Incorporated, Et Al.</p> <p>14 The deponent is Stephen E.</p> <p>15 Smith.</p> <p>16 Will counsel please identify</p> <p>17 themselves for the record and whom they</p> <p>18 represent?</p> <p>19 MR. ACKELSBURG: Irv Ackelsberg</p> <p>20 for Attorney General Shapiro.</p> <p>21 MR. GROGAN: John Grogan, also</p> <p>22 for the Commonwealth.</p> <p>23 MR. MIRARCHI: Sam Mirarchi for</p> <p>24 the Commonwealth of Pennsylvania.</p>	<p>1 - - -</p> <p>2 BY MR. ACKELSBURG:</p> <p>3 Q. Good morning, Mr. Smith.</p> <p>4 A. Good morning.</p> <p>5 Q. Have you ever been deposed before?</p> <p>6 A. Yes.</p> <p>7 Q. Okay. When -- can you tell me when or</p> <p>8 what the circumstances were of that</p> <p>9 deposition?</p> <p>10 A. It was approximately 15 years ago, by</p> <p>11 the SEC.</p> <p>12 Q. Were you working for Think Finance then?</p> <p>13 A. No.</p> <p>14 Q. Was it a prior employment?</p> <p>15 A. Yes.</p> <p>16 Q. Okay. That prior employer was who?</p> <p>17 A. At the time, I guess it was Citigroup.</p> <p>18 Q. Was it -- I don't understand what's -- I</p> <p>19 don't understand the answer. Was it -- did it</p> <p>20 have a different name?</p> <p>21 A. Well, there were several acquisitions</p> <p>22 along the way of the company that I worked for</p> <p>23 that ultimately ended with Citigroup.</p> <p>24 Q. Well, the company that was acquired by</p>

<p style="text-align: right;">Page 17</p> <p>1 Q. And what was your first job out of 2 school after you graduated? 3 A. I worked for a company called Security 4 Pacific Auto Finance, and it was an auto 5 collections job. 6 Q. And were you doing the collecting -- 7 collecting yourself? 8 A. Yes. 9 Q. Okay. And how long did you do that? 10 A. Four years. 11 Q. Up until the Auto One Acceptance job? 12 A. Yes. 13 Q. Okay. I take it you don't have any 14 legal training? 15 A. No. 16 Q. So you didn't go to law school. Have 17 you done any kind of legal training while you 18 were working for compliance, either at 19 Accept -- Auto One Acceptance or Think 20 Finance? 21 MR. SCHEFF: Object to form. 22 THE WITNESS: No. 23 BY MR. ACKELSBURG: 24 Q. Okay. So let's start with your hiring.</p>	<p style="text-align: right;">Page 19</p> <p>1 people there, who was in the compliance unit, 2 back when you started? 3 A. Are you asking about specific names? 4 Q. Well, let's start with, how big of a 5 department was it? 6 A. Maybe five or six people. 7 Q. And when you started, what were those 8 five or six people doing? What was the job of 9 the compliance department? 10 A. There were people involved with doing 11 compliance monitoring, compliance testing. I 12 believe one lady worked on state licenses. We 13 had someone that was performing user 14 acceptance testing for any technology-type 15 items. We had someone that was responding to 16 customer complaints. That's the majority of 17 it, I believe. 18 Q. Among those five or six people in 19 compliance at the time, back -- and we're 20 talking roughly 2009, right? Okay. Were any 21 of them still there at Think Finance when you 22 started doing the tribal lending programs? 23 A. Yes. 24 Q. And who were they?</p>
<p style="text-align: right;">Page 18</p> <p>1 Do you remember how you got 2 connected to Think Finance? Where, by the 3 way, was -- where was Auto One Acceptance 4 Corporation located? 5 A. They were located in Addison, Texas. 6 Q. All right. So in the same general -- 7 general vicinity. How did you -- how did you 8 end up working for -- so you took -- Think 9 Finance in Fort Worth, right? 10 A. Yes. 11 Q. So tell us how you found the job, how 12 you got attracted to the job. 13 A. A former employee of mine that I worked 14 with at Citigroup knew someone at Think 15 Finance. And I was looking for a job, and she 16 put me in touch with someone that worked in 17 the compliance department who then directed me 18 on how to submit a -- my application. 19 Q. So you said there was a whole compliance 20 department when you applied? 21 A. Yes. 22 Q. Okay. And so when you applied back 23 then, tell me what the compliance depart -- 24 who constituted the -- the -- in terms of the</p>	<p style="text-align: right;">Page 20</p> <p>1 A. Joan Verna -- you're asking about 2 specific names? 3 Q. Yes. Joan Verna, with a "V"? 4 A. Yes. 5 Q. Anyone else? 6 A. I don't recall exactly the dates of when 7 folks left with respect to when the tribal 8 programs started. 9 Q. But Joan Verna, you remember, is a -- 10 A. I know for sure Joan was there, yes. 11 Q. Is she still there? 12 A. No. 13 Q. Where did she go? 14 A. She's at Elevate. 15 Q. Did you ever get an opportunity to apply 16 for a job at Elevate? 17 A. I never applied for a job at Elevate, 18 no. 19 Q. Did you have the option? 20 A. I assume I did, but... 21 Q. Any particular reason why you decided to 22 stay with Think and not go over to Elevate? 23 A. Well my role gave me an opportunity to 24 have a little bit expanded role with Think in</p>

<p style="text-align: right;">Page 21</p> <p>1 the compliance function. So it was a good 2 opportunity for me to stay at Think Finance. 3 Q. Now at the time you started in the 4 compliance department back in 2009, my 5 recollection is that the company had the 6 direct lending products, Payday One, right? 7 A. Yes. 8 Q. And I think there was -- was it -- did 9 they have the other labels, Payday Select and 10 Payday OK or just Payday One? 11 A. I know that it was Payday One. 12 Payday OK and Payday Select, I'm not that 13 familiar with. I -- I don't recall if those 14 were still operating at the time that I 15 started. 16 Q. Okay. But you knew -- there was a 17 direct lending product called Payday One, 18 right? 19 A. Yes. 20 Q. And then there was another product, an 21 installment loan product, that the company was 22 working with First Bank of Delaware on, right? 23 A. Yes. 24 Q. Okay. And am I right, that the -- so</p>	<p style="text-align: right;">Page 23</p> <p>1 referred to as a traditional Payday loan 2 product, right? 3 MR. SCHEFF: Object to the 4 form. 5 BY MR. ACKELSBURG: 6 Q. You know what that term means, right? 7 A. If you could explain what you mean by 8 a -- 9 Q. A two-week loan. After two weeks, you 10 either pay it or renew it and that's -- 11 something like that. 12 MR. SHELTON: Object to form. 13 THE WITNESS: My recollection 14 is that there may have been some states where 15 there was the short-term, 30-day repayment. 16 But I believe there were also some Payday 17 installment states. 18 BY MR. ACKELSBURG: 19 Q. All right. And I appreciate the answer 20 because I think -- correct me if I'm wrong -- 21 but I think what you're telling me is, with 22 regard to the Payday One product, they were 23 offered in a state-specific way to respond to 24 the different laws that existed across the</p>
<p style="text-align: right;">Page 22</p> <p>1 the Payday product operated with what is 2 referred to as the direct lender model, right? 3 You're familiar with that term, right? 4 MR. SHELTON: Objection. 5 MR. SCHEFF: Object to the 6 form. 7 THE WITNESS: Yes. 8 BY MR. ACKELSBURG: 9 Q. Okay. Whereas the ThinkCash products, 10 the installment loan products, operated under 11 something called the service provider model; 12 am I right? 13 A. We were a service provider to First Bank 14 of Delaware, who was the lender, yes. 15 Q. Okay. Now I want to talk about the two 16 product lines separately. And we're still 17 back in 2009, okay? 18 A. Okay. 19 Q. All right. So Payday One being a -- it 20 was basically -- it was an online product, 21 right? It was offered over the Internet, 22 right? 23 A. Yes. 24 Q. Okay. And it was a -- what is generally</p>	<p style="text-align: right;">Page 24</p> <p>1 country. Would that be fair? 2 MR. SCHEFF: Object to the 3 form. 4 MR. SHELTON: Objection. 5 THE WITNESS: Yes. 6 BY MR. ACKELSBURG: 7 Q. Okay. And so one of the jobs of 8 compliance, the compliance function at Think 9 Finance back then, was to make sure that 10 whatever Think was doing offering consumers in 11 a particular state conformed to whatever the 12 law was in that state. 13 MR. SHELTON: Object to form. 14 THE WITNESS: Correct. 15 BY MR. ACKELSBURG: 16 Q. And in order to do that job, the 17 compliance people would have to familiarize 18 themselves with state usury law, right? 19 A. Yes. 20 Q. And the licensing requirements? 21 A. Yes. 22 Q. And if there were specific Payday 23 lending authorization legislation in that 24 state that defined the product, you would have</p>

<p style="text-align: right;">Page 25</p> <p>1 to be really familiar with that legislation. 2 Am I right? 3 MR. SCHEFF: Object to the 4 form. 5 MR. SHELDON: Form. 6 THE WITNESS: Somewhat, yes. 7 But we also received guidance from in-house 8 counsel on -- if it was something that was 9 legislative. 10 BY MR. ACKELSBURG: 11 Q. Well, what I mean by the legislative is 12 that some states -- I think you already said 13 that some states might say it was a 30-day 14 payback or some states might put a limit on 15 the interest rate or things like that, right? 16 A. Yes. 17 Q. And so I'm not asking you what specific 18 guidance you got from your counsel. I'm 19 saying that in order to do your job as a 20 compliance officer, you would need to be 21 familiar with whatever those state laws were? 22 A. Correct. 23 Q. Okay. Because you have to make sure 24 that the terms of the loan that you're</p>	<p style="text-align: right;">Page 27</p> <p>1 when there was a transition to tribal lending. 2 That time period. Okay? 3 So Payday -- the Payday One 4 product was offered during -- in 2009 and 5 2010, right? 6 A. I believe that's correct, yes. It 7 didn't last very long after I started. 8 Q. Right. 9 A. I -- we didn't do a whole lot with 10 Payday One after I started. It was winding 11 down. 12 Q. Okay. But at least during the period 13 that you were working on it and -- I mean, was 14 there a period where you stopped working on 15 Payday One and other people did it, or are you 16 talking collectively among the compliance 17 people? 18 A. I mean collectively among the compliance 19 folks because the product was being 20 discontinued over the course of time, and I 21 don't think it lasted very long after I 22 started. 23 Q. Okay. But while it was -- while it was 24 still going on and you had to familiarize</p>
<p style="text-align: right;">Page 26</p> <p>1 offering consumers are consistent with those 2 laws, right? 3 MR. SHELDON: Object to form. 4 THE WITNESS: Yes. 5 BY MR. ACKELSBURG: 6 Q. And you have to make sure that the 7 information communicated to the consumers who 8 are visiting the website and thinking about 9 applying for a loan, in that case a Payday One 10 loan, you have to make sure that that 11 information is also consistent with the state 12 law governing the particular loan product? 13 MR. SCHEFF: Object to the 14 form. 15 MR. SHELDON: Object to form. 16 BY MR. ACKELSBURG: 17 Q. Correct? 18 A. Correct. 19 Q. Okay. I mean, that's what compliance 20 people do, right? 21 A. Yes. 22 Q. Okay. Now, am I right, that if we -- if 23 we -- you started in 2009. And so I want to 24 talk generally about the period 2009 to 2010,</p>	<p style="text-align: right;">Page 28</p> <p>1 yourself with these different state laws that 2 we were just talking about, would I -- isn't 3 it true that some states prohibited Payday 4 lending altogether? 5 MR. SCHEFF: Object to the 6 form. 7 THE WITNESS: I don't know. 8 BY MR. ACKELSBURG: 9 Q. You didn't know that Payday One was not 10 offered in every state? 11 MR. SCHEFF: Object to the 12 form. 13 BY MR. ACKELSBURG: 14 Q. You knew that, though, right? 15 A. I knew that, yes. 16 Q. Okay. And you knew that it had 17 something to do with whatever -- I mean, if 18 the law allowed Payday One, the company would 19 have been offering Payday One in that state, 20 right? 21 MR. SCHEFF: Object to the 22 form. 23 MR. SHELDON: Object to form. 24 THE WITNESS: Not</p>

<p style="text-align: right;">Page 41</p> <p>1 MR. SHELDON: What exhibit 2 number was this marked? 3 MR. ACKELSBURG: 216. 4 MR. SHELDON: Mr. Smith, are 5 you done reading it? 6 THE WITNESS: Yes. 7 MR. SHELDON: Okay. You can 8 proceed. 9 MR. ACKELSBURG: Thank you. 10 BY MR. ACKELSBURG: 11 Q. Can you identify this document? 12 A. I don't recall if I have seen this 13 document or not. 14 Q. Okay. 15 A. Before today. 16 Q. All right. Again, it came out -- it 17 sounds like it came out of your computer, but 18 you never -- it doesn't look familiar at all 19 to you? 20 A. Not this specific document, no. 21 Q. Was part of your job in the early years 22 drafting descriptions of the program? 23 MR. SHELDON: Object to the 24 form.</p>	<p style="text-align: right;">Page 43</p> <p>1 In other words, is this -- is 2 this an accurate description of the ThinkCash 3 program as it existed back in the 2009, 2010 4 time period? 5 A. Some of it reflects -- based on my 6 knowledge of the product. Some of it, I don't 7 have direct knowledge of. 8 Q. Okay. What is the part that you know, 9 and what's the part you don't know? 10 A. Well, for example, where it talks about, 11 on page 2, the FICO score, the debt-to-income 12 ratio in the customer flow section there, 13 Teletrack derogatory, I don't know what 14 components were used in the underwriting 15 model, for example. 16 Q. All right. Okay. So forget about -- 17 forget about the customer flow section. 18 A. Okay. 19 Q. Let's -- what about the introductory -- 20 the program overview and the product 21 specifics, does that sound -- does that -- 22 take your time to reread it if you need to. 23 A. Yeah. Yeah. Absolutely. 24 The product-specific section</p>
<p style="text-align: right;">Page 42</p> <p>1 BY MR. ACKELSBURG: 2 Q. Do you remember ever doing descriptive 3 -- working on descriptive pieces about the 4 installment loan program? 5 MR. SHELDON: Object to the 6 form. 7 THE WITNESS: No. I don't 8 recall drafting descriptions like that, no. 9 BY MR. ACKELSBURG: 10 Q. Okay. Do you have any idea why it would 11 have been in your folders on the server as 12 opposed to someone else's? 13 MR. SCHEFF: Object to the 14 form. 15 THE WITNESS: No. 16 BY MR. ACKELSBURG: 17 Q. Ok. Now, at the time that you began 18 work -- your work with regard to the 19 compliance work, with regard to installment 20 loan product -- well, let me ask you this: 21 You -- with regard to the document, you've 22 never seen it before, but does it accurately 23 describe the program that you worked on in 24 terms of your compliance responsibilities?</p>	<p style="text-align: right;">Page 44</p> <p>1 as well, or just the product -- program 2 overview? 3 Q. Well, why don't you start with the 4 program overview. Is that an accurate 5 description -- an accurate overview of the 6 ThinkCash First Bank of Delaware product as 7 well as you can remember it? 8 A. As well as I can remember it, it's 9 fairly accurate, yes. 10 Q. I want to ask you about the second 11 paragraph, it says: TC Loan Service doing 12 business as ThinkCash, the marketing and 13 servicing entity of Payday One, will provide 14 all marketing and servicing for the program 15 and the lender -- and the lender will be one 16 or more banks. Currently we're working with 17 First Bank of Delaware. 18 Do you see that? 19 A. Yes. 20 Q. Okay. 21 MR. SHELDON: That is not an 22 accurate transcription of the document. 23 BY MR. ACKELSBURG: 24 Q. So my question is, where -- am I right</p>

<p style="text-align: right;">Page 45</p> <p>1 that there only was First Bank of Delaware</p> <p>2 with regard to ThinkCash, right?</p> <p>3 MR. SCHEFF: Object to the</p> <p>4 form.</p> <p>5 THE WITNESS: Based on my</p> <p>6 tenure at Think, to my knowledge, yes.</p> <p>7 BY MR. ACKELSBURG:</p> <p>8 Q. But am I also right that there was, in</p> <p>9 building the systems and -- at the company, in</p> <p>10 particular the installment loan products, the</p> <p>11 platform, that there was a -- it was built</p> <p>12 with the expectations that it could be -- it</p> <p>13 could be adjusted to work for a different</p> <p>14 bank? You could offer a similar product using</p> <p>15 that platform to a different bank, if you so</p> <p>16 choose? If that company so chose to do.</p> <p>17 MR. SCHEFF: Object to the</p> <p>18 form.</p> <p>19 MR. SHELDON: Object to form.</p> <p>20 The witness hasn't testified about building</p> <p>21 anything.</p> <p>22 THE WITNESS: Again, that was</p> <p>23 a technical aspect of the operation. I'm not</p> <p>24 a technical guy. There are other people at</p>	<p style="text-align: right;">Page 47</p> <p>1 form.</p> <p>2 MR. SHELDON: Object to the</p> <p>3 form.</p> <p>4 THE WITNESS: I don't know</p> <p>5 about if there were employees in those</p> <p>6 entities or not.</p> <p>7 BY MR. ACKELSBURG:</p> <p>8 Q. You've never heard of an employee of</p> <p>9 Tailwind, or you don't know anybody who worked</p> <p>10 for Tailwind, do you?</p> <p>11 MR. SCHEFF: Object to the</p> <p>12 form.</p> <p>13 MR. SHELDON: Object to the</p> <p>14 form.</p> <p>15 THE WITNESS: Internally, we</p> <p>16 just referred to everybody as Think.</p> <p>17 BY MR. ACKELSBURG:</p> <p>18 Q. Right. Okay. Winding up with regard to</p> <p>19 the bank. But during the bank period, do you</p> <p>20 recall their having -- do you recall that the</p> <p>21 First Bank of Delaware was operating under a</p> <p>22 cease and desist order from the FDIC? Is that</p> <p>23 something that you remember from your days in</p> <p>24 compliance?</p>
<p style="text-align: right;">Page 46</p> <p>1 the company that built those, so I can't speak</p> <p>2 intelligently on how it was built.</p> <p>3 BY MR. ACKELSBURG:</p> <p>4 Q. Okay. Now, when you started in 2009,</p> <p>5 were you aware that the marketing relationship</p> <p>6 with First Bank of Delaware was through an</p> <p>7 affiliate called Tailwind Marketing? Do you</p> <p>8 remember that?</p> <p>9 A. Yes, I do recall that.</p> <p>10 Q. And the technology services were</p> <p>11 provided using the name TC Decision Sciences,</p> <p>12 right?</p> <p>13 MR. SCHEFF: Object to the</p> <p>14 form.</p> <p>15 MR. SHELDON: Object to form.</p> <p>16 BY MR. ACKELSBURG:</p> <p>17 Q. You remember that, right?</p> <p>18 A. Yes.</p> <p>19 Q. Now, back then, was there any -- I'm</p> <p>20 wondering what the -- was there an employee of</p> <p>21 Tailwind, an employee of TC Decision Sciences,</p> <p>22 or was that really more just a matter of how</p> <p>23 things were set up in the contracts?</p> <p>24 MR. SCHEFF: Object to the</p>	<p style="text-align: right;">Page 48</p> <p>1 MR. SCHEFF: Object to the</p> <p>2 form.</p> <p>3 MR. SHELDON: Object to the</p> <p>4 form.</p> <p>5 THE WITNESS: No, I don't</p> <p>6 recall remembering or being aware of the C&D.</p> <p>7 THE COURT REPORTER: I'm</p> <p>8 sorry. Being aware of?</p> <p>9 THE WITNESS: C&D.</p> <p>10 MR. SHELDON: That's cease</p> <p>11 and desist.</p> <p>12 BY MR. ACKELSBURG:</p> <p>13 Q. Do you remember First Bank of Delaware</p> <p>14 pulling out of the ThinkCash product?</p> <p>15 MR. SCHEFF: Object to the</p> <p>16 form.</p> <p>17 THE WITNESS: Yes.</p> <p>18 BY MR. ACKELSBURG:</p> <p>19 Q. How did you learn about it, and what did</p> <p>20 you hear?</p> <p>21 A. I don't recall specifically. But in</p> <p>22 general, there was some type of -- whether it</p> <p>23 was a company announcement or my boss may have</p> <p>24 told me, but in general terms that the bank</p>

<p style="text-align: right;">Page 49</p> <p>1 was terminating the ThinkCash program.</p> <p>2 Q. Now, at that point in time, who was your</p> <p>3 boss?</p> <p>4 A. Sarah Cutrona.</p> <p>5 Q. Oh, okay. Now, were -- did everybody</p> <p>6 within compliance report to Sarah, or did you</p> <p>7 have some supervisory responsibility over the</p> <p>8 rest of the people there?</p> <p>9 A. I had supervisory responsibility over</p> <p>10 some of the people.</p> <p>11 Q. And was that true from the beginning of</p> <p>12 your tenure?</p> <p>13 A. As I recall, yes.</p> <p>14 Q. Okay. So the other -- did everybody</p> <p>15 within the compliance group report to you, and</p> <p>16 then you reported to Sarah Cutrona? Is that</p> <p>17 how it worked?</p> <p>18 A. I believe that is correct, yes.</p> <p>19 Q. So then you would have been the most</p> <p>20 senior of the non-lawyers working in the</p> <p>21 compliance area?</p> <p>22 A. Could you define senior?</p> <p>23 Q. In terms of -- not in terms of your age,</p> <p>24 but I mean in terms of your responsibilities.</p>	<p style="text-align: right;">Page 51</p> <p>1 MR. SCHEFF: Same objection.</p> <p>2 THE WITNESS: Well, if you</p> <p>3 could be more specific about transition.</p> <p>4 BY MR. ACKELSBURG:</p> <p>5 Q. Okay. We're talking about Plain Green</p> <p>6 went online the beginning of April 2011,</p> <p>7 right?</p> <p>8 A. Yes.</p> <p>9 Q. Okay. First Bank of Delaware notified</p> <p>10 Think that it was going to have to stop</p> <p>11 originating loans in its name end of October</p> <p>12 2010. Does that sound about right?</p> <p>13 MR. SCHEFF: Object to the</p> <p>14 form.</p> <p>15 MR. SHELDON: Same objection.</p> <p>16 THE WITNESS: Sounds about</p> <p>17 right.</p> <p>18 BY MR. ACKELSBURG:</p> <p>19 Q. Okay. And that was effective the end of</p> <p>20 the year in 2010, right? The stoppage of</p> <p>21 First Bank of Delaware originations.</p> <p>22 A. Yeah. I don't recall the date that it</p> <p>23 ended.</p> <p>24 Q. The specific date is not important in my</p>
<p style="text-align: right;">Page 50</p> <p>1 A. Ok. Yes. Not in terms of tenure?</p> <p>2 Q. Yes.</p> <p>3 A. Yes.</p> <p>4 Q. Okay. Now, were you involved at all in</p> <p>5 the planning -- in planning the transition</p> <p>6 from ThinkCash to Plain Green?</p> <p>7 MR. SCHEFF: Object to the</p> <p>8 form.</p> <p>9 MR. SHELDON: Object to the</p> <p>10 form.</p> <p>11 THE WITNESS: Can you be more</p> <p>12 specific about planning?</p> <p>13 BY MR. ACKELSBURG:</p> <p>14 Q. Did you have any role at all in the</p> <p>15 transition from -- you know what I'm talking</p> <p>16 about, the transition from ThinkCash to Plain</p> <p>17 Green?</p> <p>18 MR. SCHEFF: Object to the</p> <p>19 form.</p> <p>20 MR. SHELDON: Object to form.</p> <p>21</p> <p>22 BY MR. ACKELSBURG:</p> <p>23 Q. You understand what I'm referring to</p> <p>24 there?</p>	<p style="text-align: right;">Page 52</p> <p>1 question, so -- okay. So -- and then roughly</p> <p>2 three months later or several months later,</p> <p>3 the installment loan product was running again</p> <p>4 but with a different label?</p> <p>5 MR. SCHEFF: Object to the</p> <p>6 form.</p> <p>7 MR. SHELDON: Object to the</p> <p>8 form.</p> <p>9 BY MR. ACKELSBURG:</p> <p>10 Q. Do you understand? Do you understand my</p> <p>11 question?</p> <p>12 A. I don't know that I would characterize</p> <p>13 it as a different label.</p> <p>14 Q. Okay. How would you characterize it?</p> <p>15 A. There was an installment product that we</p> <p>16 were servicing for Plain Green.</p> <p>17 Q. Okay. Were you at all -- were you</p> <p>18 involved at all in -- you had compliance</p> <p>19 responsibilities with regard to the</p> <p>20 installment loan product that was done with</p> <p>21 First Bank of Delaware, right?</p> <p>22 A. Yes.</p> <p>23 Q. Okay. And you ultimately had compliance</p> <p>24 responsibility with regard to the</p>

<p style="text-align: right;">Page 141</p> <p>1 the -- both?</p> <p>2 BY MR. ACKELSBURG:</p> <p>3 Q. Yeah. I think that will be easier for</p> <p>4 you to see what's going on. It looks somewhat</p> <p>5 similar to the last SOP we looked at.</p> <p>6 A. Okay.</p> <p>7 Q. Why don't we start with that? I'm</p> <p>8 showing you the exhibit that was previously</p> <p>9 marked Exhibit P-60, the standard operating</p> <p>10 procedure for Mobiloans, that's basically the</p> <p>11 same -- the equivalent policy that we were</p> <p>12 looking at before for Plain Green, right?</p> <p>13 MR. SCHEFF: Objection to the</p> <p>14 form.</p> <p>15 BY MR. ACKELSBURG:</p> <p>16 Q. You can refer back to Exhibit 223. In</p> <p>17 fact, you can even -- just put them side by</p> <p>18 side.</p> <p>19 A. Yeah. It has the same name, yes.</p> <p>20 Q. And well -- and it's largely the same</p> <p>21 policy; am I right?</p> <p>22 MR. SCHEFF: Object to the</p> <p>23 form.</p> <p>24 MR. SHELTON: Object to form.</p>	<p style="text-align: right;">Page 143</p> <p>1 sure that they were kept current and reviewing</p> <p>2 them on a regular basis.</p> <p>3 Q. Good. Okay. So is this -- and Kim</p> <p>4 Palermo, you know, is an employee of</p> <p>5 Mobiloans, right?</p> <p>6 A. Yes.</p> <p>7 Q. Okay. So -- and this is in 2014, a</p> <p>8 couple of years later than the last e-mails we</p> <p>9 were looking at. And the subject: Pending</p> <p>10 SOPs, importance high. And LeAnna writes to</p> <p>11 Kim, basically saying as you described, that</p> <p>12 we're trying to get these SOPs updated and can</p> <p>13 you look at these? We've updated them and if</p> <p>14 they are okay, can you please send your</p> <p>15 approval? That's basically what she is</p> <p>16 saying, right?</p> <p>17 A. Yeah. She's asking --</p> <p>18 MR. SCHEFF: Object to the</p> <p>19 form. Go ahead.</p> <p>20 THE WITNESS: She's asking</p> <p>21 Kim to review the SOP and what appears to me</p> <p>22 is asking Kim if there are any updates or</p> <p>23 edits that Kim needs to make to the SOP.</p> <p>24 BY MR. ACKELSBURG:</p>
<p style="text-align: right;">Page 142</p> <p>1 Irv, I think there are some material</p> <p>2 differences --</p> <p>3 MR. ACKELSBURG: Yeah. I</p> <p>4 mean, that's fine. He can -- there are some</p> <p>5 differences. Fine.</p> <p>6 BY MR. ACKELSBURG:</p> <p>7 Q. It's the equivalent document -- it's the</p> <p>8 equivalent SOP for Mobiloans to the one we</p> <p>9 were looking at before for Plain Green, right?</p> <p>10 MR. SCHEFF: Object to the</p> <p>11 form.</p> <p>12 MR. SHELTON: Object to form.</p> <p>13 THE WITNESS: Yes.</p> <p>14 BY MR. ACKELSBURG:</p> <p>15 Q. So I want to start this e-mail chain</p> <p>16 from someone -- there is someone named LeAnna</p> <p>17 Brillhart at Think Finance, who has a position</p> <p>18 of senior policies analyst. Do you know</p> <p>19 LeAnna or did you know who she was?</p> <p>20 A. Yes.</p> <p>21 Q. Who was she?</p> <p>22 A. She was in the loan operations group,</p> <p>23 and one of her primary roles was assisting</p> <p>24 with standard operating procedures, making</p>	<p style="text-align: right;">Page 144</p> <p>1 Q. Right. And then -- so that's September</p> <p>2 30th. And then October 9th, she is kind of</p> <p>3 reminding Kim that she's still waiting for</p> <p>4 those, right?</p> <p>5 A. Yes.</p> <p>6 Q. Okay. Let's look at Kim's response on</p> <p>7 that same day, October 9th. And you're cc'd</p> <p>8 with this one, right?</p> <p>9 A. Yes.</p> <p>10 Q. And this is now -- so I take it</p> <p>11 Mobiloans also communicated with you at the</p> <p>12 TC Decision Sciences address?</p> <p>13 A. Correct.</p> <p>14 Q. Was that true of Great Plains Lending</p> <p>15 also?</p> <p>16 A. I believe so.</p> <p>17 Q. Okay. And let's see what Kim says back</p> <p>18 to LeAnna. She says: This SOP is not being</p> <p>19 followed by either party. My supervisor or</p> <p>20 lead will approve the applications by 4 p m.,</p> <p>21 the current cutoff time for funding. But this</p> <p>22 is only Monday through Friday. Anything on</p> <p>23 the weekend is approved by the system. I've</p> <p>24 tried getting a report to see what percentage</p>

<p style="text-align: right;">Page 145</p> <p>1 of loans was approved manually. It took 2 forever to figure out how to pull it. The 3 percentage of system-approved loans was 4 tremendously high. I have never received a 5 report on the 10 percent threshold, as noted 6 in Item 3.2.1. Stephen and I went through 7 this last year at the end of October and never 8 really cleared it up. Before I can update 9 this SOP, I need to know that the system will 10 not approve on the weekend and after-hours but 11 wait until the supervisor has a chance to 12 approve. Check with Stephen on this, please. 13 Do you see that? 14 A. Yes. 15 Q. And in fact, you're -- just to make sure 16 that you knew this was going on, she cc'd you, 17 right? 18 A. Yes. 19 Q. Okay. Now, my first question is, do you 20 remember, either at this point in time, 21 October 2014, or as she says, a year before 22 that, like in 2013 sometime, talking to 23 Mobiloans about this particular policy not 24 being followed?</p>	<p style="text-align: right;">Page 147</p> <p>1 is sent to the tribe, in this case Mobiloans, 2 indicating the loans, among other things, the 3 loans that were approved over the course of 4 the last day. That's basically what -- right? 5 MR. SHELDON: Object to form. 6 THE WITNESS: Essentially, 7 yes. 8 BY MR. ACKELSBERG: 9 Q. And that's the system that -- as it was 10 set up, that the loan approvals, the approvals 11 rendered by the decision engine, would be 12 listed on a screen for the tribal employees to 13 review at the end of the day, right? 14 A. That's correct. 15 Q. And the main function of this policy was 16 to make sure that the tribe got a report 17 whenever -- let me step back. I missed a -- I 18 think I missed a step. 19 So the screen enabled the 20 tribal employees to actually either push a 21 button or click something on the screen to 22 indicate the tribe approves funding those 23 loans that were approved, right? 24 A. My rec --</p>
<p style="text-align: right;">Page 146</p> <p>1 A. I have a vague recollection of this 2 particular topic. I don't recall very clearly 3 or specifically, but I do have a vague 4 recollection of it, yes. 5 Q. All right. And you have the policy 6 there with you. Just so -- 7 MR. SHELDON: Are you 8 referencing to the procedure? 9 MR. ACKELSBERG: Yeah. The 10 procedure. I'm sorry. P-60. 11 BY MR. ACKELSBERG: 12 Q. So basically this procedure is about -- 13 let me step back for a minute. 14 We talked before about the -- 15 when we were talking about the loan 16 underwriting policy, information goes into the 17 system. Whatever kind of information is used, 18 the tribe would have had to approve on the 19 front end. And then the decision engine 20 renders a decision, either approved; declined; 21 or approved, pending verification, right? 22 A. Yes. 23 Q. Okay. And this procedure seems to 24 indicate that there is also -- the information</p>	<p style="text-align: right;">Page 148</p> <p>1 Q. Something like that? 2 MR. SHELDON: Object to form. 3 THE WITNESS: My recollection 4 is that they saw each individual borrower who 5 had passed Mobiloans's credit underwriting 6 criteria and as a result, had passed it to be 7 approved. And they had the opportunity, if 8 they chose, to go in and they could review any 9 one of those. They could select any 10 particular one if for whatever reason they 11 might want to withhold the funding of a 12 particular consumer. 13 MR. SHELDON: Let the witness 14 finish. 15 MR. ACKELSBERG: I'm sorry 16 for interrupting. 17 THE WITNESS: So that was the 18 intent of the functionality. 19 BY MR. ACKELSBERG: 20 Q. Now from the standpoint of the user of 21 -- in this case, the user -- the user end, 22 we're talking about someone at the tribe, 23 right? If we're talking about that screen. 24 A. Correct.</p>

<p style="text-align: right;">Page 149</p> <p>1 Q. Okay. So it gave the user at the tribe 2 the opportunity to say, even though the system 3 has approved this person for a loan, we don't 4 want that loan funded? 5 A. The intent was to give them that 6 functionality, yes. 7 Q. Okay. And my question is, in the set-up 8 of the system, what information would the 9 tribe have available to it -- why would the 10 tribe want to reject the loan? 11 MR. SCHEFF: Object to the 12 form. 13 BY MR. ACKELSBURG: 14 Q. What information came? It's just a 15 name, right? 16 MR. SCHEFF: Object to the 17 form. 18 MR. SHELDON: Object to form. 19 BY MR. ACKELSBURG: 20 Q. Anything more than a name? 21 MR. SCHEFF: Object to the 22 form. 23 THE WITNESS: Well, they can 24 take the name, and then go into the front-end</p>	<p style="text-align: right;">Page 151</p> <p>1 those loans would be funded, the approved 2 loans would be funded, absent some affirmative 3 rollback that was communicated from the tribe 4 to Think Finance on that functionality that 5 you're talking about, right? 6 MR. SCHEFF: Object to the 7 form. 8 MR. SHELDON: Object to form. 9 THE WITNESS: Right. They 10 had ultimate authority through that screen if 11 they wanted to remove one or all of those 12 approvals through the functionality. Again, 13 that was intent of the functionality, even 14 though, like I said, they wouldn't have been 15 put on that screen had they not already passed 16 the lender's criteria. 17 BY MR. ACKELSBURG: 18 Q. Okay. It sounds like from the e-mail 19 that Kim Palermo was actually taking that 20 responsibility seriously, that she was at the 21 end of the day, taking responsibility for 22 going over that screen and pushing that 23 approval button, right? 24 MR. SCHEFF: Object to the</p>
<p style="text-align: right;">Page 150</p> <p>1 system and review the application. They could 2 review any notes that might have been 3 attached. They could review documents if the 4 customer actually had to send in documents. 5 So there were pieces of the process that they 6 could review just based on the name. I don't 7 recall. It may have been where they could 8 have clicked on that name and it took them to 9 that screen. 10 BY MR. ACKELSBURG: 11 Q. But you don't know whether, in fact, 12 that -- 13 A. Yeah. I don't recall. I didn't work 14 with that particular system very much. 15 Q. Okay. Now, am I right that if, let's 16 say, at the end of the day, Mobiloans did 17 nothing, they didn't review the loans, the 18 loans would get funded anyway, right? 19 A. They would get funded based on their 20 approved credit underwriting criteria. So at 21 the point that that screen was building 22 throughout the day, the loans had already 23 passed their approved underwriting criteria. 24 Q. And so just to be clear, those -- and</p>	<p style="text-align: right;">Page 152</p> <p>1 form. 2 BY MR. ACKELSBURG: 3 Q. That's kind of what it looks like. 4 A. I don't know if she was personally -- 5 Q. Someone was there was doing that? 6 A. -- responsible to review them or if she 7 had someone to do it. But clearly she was 8 reviewing the SOP against their internal 9 procedures and raising the concern that they 10 weren't following their SOP. And I don't know 11 who she had doing that review process. 12 Q. Am I right, that's she's also -- it 13 sounds like she's also complaining about 14 another aspect of it, which is that when she 15 or someone working with her would go to the 16 screen at five o'clock in the afternoon, she 17 would -- she felt like she was having some 18 involvement in the underwriting process but 19 loans were effectively getting -- but loans 20 were still being approved and funded in the 21 evenings, over the weekends, during periods 22 where there was no one in the office at 23 Mobiloans, right? That's parts of what her 24 concern is, right?</p>

<p style="text-align: right;">Page 153</p> <p>1 MR. SHELDON: Object to form.</p> <p>2 THE WITNESS: I think her</p> <p>3 concern with the applications that came in on</p> <p>4 the weekends.</p> <p>5 BY MR. ACKELSBURG:</p> <p>6 Q. Okay. There's no one there to push the</p> <p>7 button and that the loans would effectively</p> <p>8 get approved without the review, right?</p> <p>9 That's what part of what she is concerned</p> <p>10 about.</p> <p>11 MR. SCHEFF: Object to the</p> <p>12 form.</p> <p>13 MR. SHELDON: Same objection.</p> <p>14 THE WITNESS: Loans didn't</p> <p>15 actually fund on the weekend. So what I think</p> <p>16 that she was concerned with is that those</p> <p>17 screens may not have been available. I don't</p> <p>18 know for sure, but in reading this, that's</p> <p>19 my -- what I take from that.</p> <p>20 However, on Monday, they had</p> <p>21 until 4 p m. that afternoon. Even though that</p> <p>22 screen may not have shown them the</p> <p>23 applications that conformed to their credit</p> <p>24 policy on the weekend, they could have taken</p>	<p style="text-align: right;">Page 155</p> <p>1 But I think she's saying on the Think Finance</p> <p>2 end, she's saying, we're not getting that</p> <p>3 report. That's part of what she's complaining</p> <p>4 about, right?</p> <p>5 MR. SCHEFF: Object to the</p> <p>6 form.</p> <p>7 THE WITNESS: Yes. That's</p> <p>8 what it appears to me.</p> <p>9 BY MR. ACKELSBURG:</p> <p>10 Q. You -- and by the way, she said that</p> <p>11 I raised this issue with Stephen a year ago,</p> <p>12 right? So you do vaguely remember this having</p> <p>13 come up -- periodically with Mobiloans?</p> <p>14 MR. SCHEFF: Object to the</p> <p>15 form.</p> <p>16 THE WITNESS: I remember the</p> <p>17 topic. Again, I don't recall specifically if</p> <p>18 and what we may have talked about in October.</p> <p>19 And again -- I remember the topic though.</p> <p>20 BY MR. ACKELSBURG:</p> <p>21 Q. Okay. And so at least in 2014, we don't</p> <p>22 know what happened in 2013, but in 2014, you</p> <p>23 write to Neal: Please see Kim's question</p> <p>24 below about the systems approvals. Will you</p>
<p style="text-align: right;">Page 154</p> <p>1 action and contacted us and, you know, gotten</p> <p>2 that information. I don't think the intent</p> <p>3 was to not show those screens on the weekend.</p> <p>4 I think that that was just a technical issue</p> <p>5 that we had.</p> <p>6 BY MR. ACKELSBURG:</p> <p>7 Q. And as I read the SOP, it seems like one</p> <p>8 of principal functions of the SOP was to</p> <p>9 generate a report so that the tribe would have</p> <p>10 a sense of how -- what percentage of the loan</p> <p>11 fundings were occurring without them having</p> <p>12 had the opportunity to review the approvals</p> <p>13 rendered by the decision engine; am I right?</p> <p>14 MR. SCHEFF: Object to the</p> <p>15 form.</p> <p>16 MR. SHELDON: Object to form.</p> <p>17 Mischaracterizes the document.</p> <p>18 THE WITNESS: Item 3 in the</p> <p>19 SOP does talk about reporting, correct.</p> <p>20 BY MR. ACKELSBURG:</p> <p>21 Q. And so part of her concern when she says</p> <p>22 neither party is following the SOP, I mean, I</p> <p>23 think that she's saying on her end, they are</p> <p>24 not always doing the job, as you mentioned.</p>	<p style="text-align: right;">Page 156</p> <p>1 dig into this?</p> <p>2 What were you asking Neal to</p> <p>3 dig into?</p> <p>4 A. The -- well, I don't know. It was</p> <p>5 either -- she wants to know what percentage --</p> <p>6 so I believe I was asking Neal to look into</p> <p>7 the reporting aspect, since that's what Kim</p> <p>8 called me out for in her e-mail.</p> <p>9 Q. Did you -- do you remember -- did you</p> <p>10 ever hear back from Neal or anybody about</p> <p>11 what, -- whether Neal dug into this and what</p> <p>12 he found out? Do you remember?</p> <p>13 A. I don't recall if Neal communicated back</p> <p>14 to me specifically or not.</p> <p>15 Q. Do you remember hearing -- see if this</p> <p>16 refreshes your recollection. Do you remember</p> <p>17 Neal reporting back to you that the IT people</p> <p>18 looked into it and concluded that there was no</p> <p>19 functionality on this part of the system at</p> <p>20 all?</p> <p>21 A. I don't specifically recall that.</p> <p>22 Q. You don't -- Neal didn't tell you that,</p> <p>23 in fact, that there's -- that whether the</p> <p>24 tribe says approve or reject, it doesn't</p>

<p style="text-align: right;">Page 157</p> <p>1 matter because the loans are going to get 2 funded anyway? You don't remember him finding 3 that out from the IT people? 4 A. If he told me that, I just don't recall 5 that he told me. 6 Q. Well, wouldn't that have been -- 7 wouldn't that have been -- that sounds 8 remarkable to me as an outsider. But you 9 don't remember that? 10 MR. SHELDON: Object to form, 11 asked and answered. 12 THE WITNESS: No. 13 MR. ACKELSBURG: Okay, we can 14 break now for lunch. 15 VIDEOTAPE OPERATOR: That 16 concludes DVD number two. The time is 12:26. 17 We are off the record. 18 - - - 19 (Whereupon a lunch break was 20 taken at this time.) 21 - - - 22 VIDEOTAPE OPERATOR: This 23 begins DVD number three. It's 1:00 p m. 24 We're on the record.</p>	<p style="text-align: right;">Page 159</p> <p>1 of that same policy that we were talking about 2 with Mobiloans, right? 3 A. Yes. 4 Q. Okay. And so it starts out that LeAnna 5 writes to two people at Plain Green to remind 6 them that she's trying to update the SOPs and 7 she asked them to take a look at it and 8 approve or comment, what have you, right? 9 A. Correct. 10 Q. And then 11 days later, she is bugging 11 them, you know, you never did what I asked; 12 please look at those SOPs, right? And then 13 she gets a reply from someone named Jim 14 Raider, who as we see from the e-mail, is at 15 that time Plain Green's call center manager. 16 Do you remember Jim? 17 A. I do remember Jim. 18 Q. Okay. So he writes back to LeAnna and 19 again, the subject is this same SOP that we 20 have been looking at. And he said: This 21 looks good to me. However, it would be hard 22 for me to say if there is anything missing as 23 I have not been involved in this process. 24 And you understand him to</p>
<p style="text-align: right;">Page 158</p> <p>1 BY MR. ACKELSBURG: 2 Q. Before we -- Mr. Smith, before we broke 3 for lunch, we were looking at an e-mail chain 4 between Think Finance and Kim Palermo at 5 Mobiloans regarding Mobiloans' concerns 6 expressed about a request that they approved 7 an update on an SOP entitled "Daily Review of 8 Proposed Application for Funding," right? 9 A. Yes. 10 - - - 11 (Whereupon Exhibit P-225 was marked for 12 identification.) 13 - - - 14 BY MR. ACKELSBURG: 15 Q. Now, I'm show you go you another that we 16 have identified as Plaintiff's Exhibit 225. 17 And it's a chain that begins Bates number 18 Think Finance 994814. And ask you to confirm 19 that it appears the beginning of this e-mail 20 chain is in roughly the same period of time 21 the, fall of 2014, where the same person, 22 LeAnna Brillhart, is now asking a different 23 tribal lending entity, in this case Plain 24 Green, to send back the Plain Green equivalent</p>	<p style="text-align: right;">Page 160</p> <p>1 refer to the process that we were talking 2 about before, where the tribe has the ability 3 to look at an approval screen and see if the 4 loans funded on a particular day should be 5 approved or rejected, right? 6 A. Yes. 7 Q. So basically he is saying, you know, I 8 don't have anything to do with this process. 9 Can you tell me who has this access and who 10 makes the final approval and who the five 11 logins are assigned to? 12 So I take it, from what 13 Mr. Raider is saying, is that only certain 14 people were authorized at the tribal level to 15 access that approval screen, the funding 16 screen, whatever it's called, that we were 17 talking about before; is that right? It's not 18 open to the public. You have to have a 19 specific person -- a person needs an actual 20 login in order to get onto that screen? 21 A. I believe that system users had 22 permission levels. This may have been one of 23 those where they have had to have those 24 specific permission levels to access that</p>

<p style="text-align: right;">Page 161</p> <p>1 screen.</p> <p>2 Q. Okay. So Jim Raider is reporting back</p> <p>3 to LeAnna, effectively, that he's saying, I'm</p> <p>4 not one of those people and I don't know who</p> <p>5 those people are, right? That's what he is</p> <p>6 saying.</p> <p>7 A. Yes. I believe he is saying he doesn't</p> <p>8 know who it is that has access.</p> <p>9 Q. And then LeAnna, she contacts Michelle</p> <p>10 Peak, who was one of the people that worked on</p> <p>11 Plain Green product at that time, right?</p> <p>12 A. She was in our loan operation area, and</p> <p>13 she did assist with Plain Green, yes.</p> <p>14 Q. So LeAnna asked Michelle, who are the</p> <p>15 people with access? And then Michelle writes</p> <p>16 to a number of people back at Plain Green,</p> <p>17 this was being done by someone in the back</p> <p>18 office, but I'm not sure who is approving the</p> <p>19 loan origination, right?</p> <p>20 A. Yes.</p> <p>21 Q. Okay. That's September 22nd. And, you</p> <p>22 know, a week or two later, October 2nd, she is</p> <p>23 reminding them again, I'm still waiting,</p> <p>24 right?</p>	<p style="text-align: right;">Page 163</p> <p>1 according to Paula at this point, not only</p> <p>2 does she not know who in the system is</p> <p>3 assigned but she's saying operationally,</p> <p>4 nobody is doing this. That's what she's</p> <p>5 saying, right?</p> <p>6 MR. SCHEFF: Object to the</p> <p>7 form.</p> <p>8 MR. SHELDON: Object to form.</p> <p>9 BY MR. ACKELSBURG:</p> <p>10 Q. As far as she knows, there's nobody</p> <p>11 doing that?</p> <p>12 MR. SCHEFF: Object to the</p> <p>13 form.</p> <p>14 MR. SHELDON: Objection.</p> <p>15 THE WITNESS: She states that</p> <p>16 as well as stating -- asking if -- I guess, if</p> <p>17 we knew who was completing the process.</p> <p>18 BY MR. ACKELSBURG:</p> <p>19 Q. And what we need to do to be in</p> <p>20 compliance. I mean, she is learning if this</p> <p>21 is something we're supposed to be doing,</p> <p>22 basically tell me how to do it, right? That's</p> <p>23 kind of what she's saying.</p> <p>24 MR. SCHEFF: Object to the</p>
<p style="text-align: right;">Page 162</p> <p>1 A. That was her job, yes.</p> <p>2 Q. And then she gets a reply from someone</p> <p>3 named Paula Lamere, and I guess this is the</p> <p>4 Paula that previously you weren't sure who</p> <p>5 that was, right?</p> <p>6 A. No. I think it was Nicole.</p> <p>7 Q. Nicole. You're absolutely right.</p> <p>8 Right. So this was a different person at</p> <p>9 Plain Green, Paula Lamere, and she writes</p> <p>10 back, and she's the compliance person -- she's</p> <p>11 a compliance person there. And she says: I</p> <p>12 have the same question as Jim. The SOP states</p> <p>13 the lender will have five assigned employees</p> <p>14 review proposed apps on a daily basis for</p> <p>15 final approval. Plain Green as the lender</p> <p>16 does not have employees assigned to this</p> <p>17 process. So if this is an implemented SOP,</p> <p>18 who is going to be completing the process on a</p> <p>19 daily basis?</p> <p>20 So let make sure I'm reading</p> <p>21 this right.</p> <p>22 Plain Green has this ability</p> <p>23 to get on a screen and look at the loans</p> <p>24 before they are funded. But at least</p>	<p style="text-align: right;">Page 164</p> <p>1 form.</p> <p>2 BY MR. ACKELSBURG:</p> <p>3 Q. Agreed?</p> <p>4 A. Agreed.</p> <p>5 Q. All right.</p> <p>6 A. A clarification. In compliance with</p> <p>7 their own SOP.</p> <p>8 Q. Yeah, sure. I understand. I</p> <p>9 understand. And so then Michelle writes back:</p> <p>10 Well, at some point in time, you had people</p> <p>11 approving the loan at the reservation. I'm</p> <p>12 not sure who passed this responsibility on to</p> <p>13 the next person. Do you know if Joel has been</p> <p>14 doing this or at least the access to do so? I</p> <p>15 believe it was done by the back office and by</p> <p>16 members who are no longer with Plain Green.</p> <p>17 That's her reply, right? And</p> <p>18 she sends this to the other people within the</p> <p>19 tribe that have been on this e-mail, this</p> <p>20 group discussing this issue and also she</p> <p>21 includes Blake Richter, right? Now, Blake</p> <p>22 Richter was who?</p> <p>23 A. Blake oversaw the loan operations group</p> <p>24 at Think and so Michelle reported to Blake.</p>

<p style="text-align: right;">Page 165</p> <p>1 Q. Okay. And so now Jim apparently knows 2 that because he now is sending an e-mail to 3 the same group but addressing this to Blake, 4 right? 5 A. Right. 6 Q. And basically he says -- I will just 7 read it: This is very concerning that I do 8 not believe anybody has done a final approval 9 for loans at least since I have been here and 10 who knows how much longer than that? When I 11 first responded to the request to approve the 12 SOP, I mentioned that we did not know who had 13 this access. I spoke to Jean Patton and she 14 informed me that someone from Think was 15 handling this aspect. 16 However, we're finding that 17 it's not only incorrect but Think would not be 18 able to handle this task. 19 In fact, that's true. This 20 is a task that was set up for someone at Plain 21 Green to perform, right? 22 A. Right. And my recollection is there was 23 no one at Think that ever handled that 24 process. So Jean Patton is saying that she</p>	<p style="text-align: right;">Page 167</p> <p>1 That's the whole point of the function, right? 2 A. Yes. 3 Q. Okay. And then -- and the reason I'm 4 showing this to you is Blake brings it to your 5 attention on October 3rd, sends it to you and 6 to Michelle Nguyen and basically saying, check 7 this out, right? 8 A. Yep. Well, I think Blake sent it to me 9 because on the prior chain, Greg Hilliard was 10 included. And Greg was compliance officer. 11 So Greg probably noticed that if it wasn't 12 something that if it came up that I, you 13 know -- if my counterpart at Plain Green knew 14 about this, Greg was probably just trying to 15 keep me in the loop of something that was 16 being discussed. 17 Q. So there's a response from you to Blake, 18 right? And then Paula -- you know, it's still 19 a question of who's got access. I mean, it 20 looks like it continues to be unresolved about 21 who has access, right? 22 MR. SCHEFF: Object to the 23 form. 24 MR. SHELDON: Same objection.</p>
<p style="text-align: right;">Page 166</p> <p>1 informed her that someone from Think was 2 handling it is not true. 3 Q. Okay. So before when we were talking 4 about Mobiloans, you had a little bit of a 5 recollection but not too much. It sounds like 6 with Plain Green raising the same issue, 7 you're remembering this interchange? 8 A. No. We didn't talk about this issue 9 with Mobiloans. This was specifically at -- 10 was anybody at Think Finance reviewing these 11 loans on a daily basis and -- 12 Q. Think Finance or Plain Green? 13 A. I'm referring to Jean Patton's reference 14 in here, saying she that informed Jim -- 15 Q. Oh. That someone at Think was doing it. 16 A. -- that someone at Think was doing it. 17 Q. I understand. 18 A. We didn't talk about that with 19 Mobiloans. 20 Q. No, we certainly didn't. 21 A. I'm telling you, no one at Think ever 22 did this. 23 Q. No. And we -- this was set up to be a 24 function performed by someone on tribal side.</p>	<p style="text-align: right;">Page 168</p> <p>1 THE WITNESS: It appears 2 we're trying to run a report for Plain Green 3 to let them know who currently had the 4 permissions to access that screen. 5 BY MR. ACKELSBURG: 6 Q. Yeah. And, you know, if you move ahead, 7 it looks like October 20th, a little bit 8 later, a couple of weeks later, LeAnna, still 9 trying to do her job, goes -- comes back to 10 the tribe, well, can we get this approved or 11 not, right? 12 A. Right. 13 Q. And Paula says, hold on we're trying to 14 work on a few processes, right? 15 A. Right. 16 Q. And now it looks like roughly two months 17 later, we're now into December, there's 18 LeAnna, still bugging Plain Green, can you get 19 us this policy back, right? 20 A. Right. 21 Q. And then finally -- actually Greg 22 Hilliard, your counterpart, replies back on 23 December 11th. We're now looking at 24 page 94815. And he's now replying to LeAnna.</p>

<p style="text-align: right;">Page 169</p> <p>1 He says: We have recently formed a credit 2 policy committee which has reviewed this SOP, 3 and we are currently unable to approve it at 4 this time. 5 Do you see that? 6 A. Yes. 7 Q. Now, do you remember this happening, 8 that your counter-party (sic) at Plain Green 9 was basically saying, I'm not going to sign 10 that SOP? 11 A. I don't remember that specifically. I 12 see that in the e-mail here, but I don't 13 recall. 14 Q. And it ultimately got referred to you, 15 the fact that they are refusing to sign it, 16 right? 17 MR. SCHEFF: Object to the 18 form. Misstates exhibit. 19 BY MR. ACKELSBURG: 20 Q. If you look at up at the top -- 21 MR. SHELTON: Same objection. 22 BY MR. ACKELSBURG: 23 Q. Do you see that? 24 A. Yeah. I think Blake's just asking if I</p>	<p style="text-align: right;">Page 171</p> <p>1 Any concerns? Anything you need to know? 2 Anything we need to know? 3 Q. And you would be there representing 4 compliance? 5 A. Yes. 6 Q. And would the same thing happen with 7 regard to the other two tribes? 8 A. They did. We had regular calls. 9 Q. Okay. Now, if we follow the chain, now 10 we're into January of 2015. Do you see that? 11 A. Yes. 12 Q. And Blake is trying to go figure out if 13 this ever got solved, the unsigned SOP, right? 14 A. Right. 15 Q. And then you reply -- what's your reply 16 here? I mean, you can read what's here, but I 17 would be happy to hear from you what you 18 basically -- what you remember from this, what 19 you're saying here? 20 A. So my recollection of this was that Greg 21 came back and said -- well, let's step back 22 for a minute. 23 This was a standard operating 24 procedure that Plain Green had for a function</p>
<p style="text-align: right;">Page 170</p> <p>1 could communicate with Greg to find out what 2 the -- 3 Q. The issue -- 4 A. -- problem was -- 5 Q. I understand. 6 A. -- and can the SOP be -- can we get that 7 thing handled. 8 Q. And then if you look at the -- and then 9 your response was, you know, did anyone on the 10 products team call or the operations team go 11 and talk to Greg? And you say: Let's add 12 this to the next monthly meeting call and 13 discuss. 14 So does that mean that you 15 were -- were you personally involved in a 16 weekly meeting, a compliance meeting, with 17 Plain Green? 18 A. It wasn't a compliance-specific meeting. 19 It was a general meeting between Think, Plain 20 Green. Typically it was -- yes, every Monday. 21 And there were various topics, several of our 22 departments on the call. 23 So it was just a weekly touch 24 point, you know, just how are things going?</p>	<p style="text-align: right;">Page 172</p> <p>1 that they were tasked with completing. It 2 wasn't our responsibility to make sure they 3 followed their SOPs. We didn't do reviews of 4 Plain Green to see if they were following 5 their SOPs. 6 What we did do, though, is we 7 did, as you've seen and we've talked about 8 before, helped with making sure SOPs stayed 9 current. And that involved a review process 10 back and forth between us and the lender. 11 So in this case, Plain Green 12 had some turnover in personnel. Someone was 13 doing it at one time. Through the course of 14 these personnel turnovers, it may not have 15 gotten passed down to someone. Jim Raider 16 becomes aware of it. He may have been new at 17 the time; I don't recall. 18 Then Greg steps in and says, 19 hey, we formed this committee. So, you know, 20 they are -- they have a process internally at 21 Plain Green on how they were handling this 22 situation, and we were simply trying to follow 23 up. 24 Q. As the compliance person kind of in</p>

<p style="text-align: right;">Page 173</p> <p>1 charge on the Think end, you can't tell us</p> <p>2 today that you know there was ever a time that</p> <p>3 this function was actually being followed, can</p> <p>4 you?</p> <p>5 MR. SHELDON: Object to form.</p> <p>6 THE WITNESS: No. I do</p> <p>7 remember specifically in the earlier days, I</p> <p>8 can't tell you exact time frame, but I</p> <p>9 remember specifically Neal Rosette, Jr.,</p> <p>10 performing this function.</p> <p>11 BY MR. ACKELSBURG:</p> <p>12 Q. Okay. But you remember that on the</p> <p>13 Mobiloans, when we were talking about</p> <p>14 Mobiloans before the lunch break, what turned</p> <p>15 up when Neal Humphrey, the Mobiloans product</p> <p>16 person -- I mean, he's like the equivalent of</p> <p>17 Michelle Peak in this exchange here or?</p> <p>18 A. Neal Humphrey?</p> <p>19 Q. In other words, he was the equivalent</p> <p>20 for Mobiloans. He was their -- he was the</p> <p>21 product person for Mobiloans, right?</p> <p>22 A. He was, but he was not the equivalent of</p> <p>23 Michelle Peak.</p> <p>24 Q. Okay. That's not important. In any</p>	<p style="text-align: right;">Page 175</p> <p>1 wasn't -- it wasn't -- what they had thought</p> <p>2 was happening wasn't happening, right?</p> <p>3 MR. SHELDON: Object to form.</p> <p>4 BY MR. ACKELSBURG:</p> <p>5 Q. In other words, from the Mobiloans side,</p> <p>6 even though they thought they had some role to</p> <p>7 play in the approval of the loans, whatever</p> <p>8 they did didn't matter because that function</p> <p>9 was broken on the Mobiloans platform, right?</p> <p>10 MR. SHELDON: Object to form.</p> <p>11 MR. SCHEFF: Object to the</p> <p>12 form.</p> <p>13 THE WITNESS: Right. The</p> <p>14 difference was that the system functionality</p> <p>15 for Mobiloans, there was something wrong with</p> <p>16 the communications between that particular</p> <p>17 page or screen and whatever processes were</p> <p>18 supposed to run as a result of that. Now,</p> <p>19 Mobiloans had a different loan management</p> <p>20 system.</p> <p>21 BY MR. ACKELSBURG:</p> <p>22 Q. That's CoreCard, right?</p> <p>23 A. Correct.</p> <p>24 Q. Okay. Whereas Plain Green was on the</p>
<p style="text-align: right;">Page 174</p> <p>1 case, Neal, on the Mobiloans side, discovered</p> <p>2 through the IT people who looked into the</p> <p>3 actual mechanics, the coding and mechanics of</p> <p>4 that function, Neal found that that function</p> <p>5 was totally nonfunctional within the system,</p> <p>6 right?</p> <p>7 MR. SCHEFF: Object to the</p> <p>8 form.</p> <p>9 MR. SHELDON: Object to form.</p> <p>10 Mischaracterizes prior testimony and exhibits.</p> <p>11 MR. ACKELSBURG: Okay.</p> <p>12 BY MR. ACKELSBURG:</p> <p>13 Q. That's what -- you remember that, right?</p> <p>14 A. I recall that that issue related to</p> <p>15 Mobiloans did turn out to be a system -- some</p> <p>16 functionality that was broken.</p> <p>17 Q. Okay. Yeah. What about Plain Green?</p> <p>18 Was it the same broken system?</p> <p>19 A. No. My recollection was that it worked</p> <p>20 for Plain Green.</p> <p>21 Q. Okay. So on the Plain Green side -- let</p> <p>22 me get it straight. On the Mobiloans side,</p> <p>23 the system was just broken, and even if the</p> <p>24 tribe wanted to perform that function, it</p>	<p style="text-align: right;">Page 176</p> <p>1 legacy platform?</p> <p>2 A. Correct.</p> <p>3 Q. So as far as you know on the legacy</p> <p>4 platform, that function did work?</p> <p>5 A. Yes.</p> <p>6 Q. Okay. It's just that with regard to</p> <p>7 Plain Green, at least for a period of time, no</p> <p>8 one was doing it?</p> <p>9 A. That's what it appears, yes.</p> <p>10 Q. Okay. I got it. I want to show you a</p> <p>11 document that we identified yesterday as</p> <p>12 Plaintiff's Exhibit 210. I just have a couple</p> <p>13 of questions. Richard has his copy. We have</p> <p>14 the ones -- the reporter has her copy. It's</p> <p>15 the change control. Richard, can you show the</p> <p>16 other folks?</p> <p>17 MR. SCHEFF: What's the Bates</p> <p>18 numbers?</p> <p>19 MR. ACKELSBURG: The Bates</p> <p>20 number of the change control is 187354. And</p> <p>21 there's an e-mail that I believe was attached</p> <p>22 to it. Actually, here's one. So the e-mail</p> <p>23 is 187345.</p> <p>24 MR. SHELDON: The witness</p>

<p style="text-align: right;">Page 249</p> <p>1 managing bigger pieces of the operations than</p> <p>2 they did day one. And so this was a way to</p> <p>3 try to formalize the types of things that</p> <p>4 could still be transitioned and for the tribes</p> <p>5 to take ownership of certain activities that</p> <p>6 maybe they outsourced.</p> <p>7 But it was because of the</p> <p>8 growth and maturation of the tribe and the</p> <p>9 product that they wanted to have a little bit</p> <p>10 more of the operations to themselves.</p> <p>11 Q. And who prepared -- was this something</p> <p>12 you prepared or Michelle prepared, or who did</p> <p>13 this, do you remember?</p> <p>14 A. I think this was a collective -- this</p> <p>15 particular document incorporated lists of</p> <p>16 activities that both Think and the tribes</p> <p>17 participated in -- in identifying. And then</p> <p>18 I think someone at Think actually scribed most</p> <p>19 of this.</p> <p>20 Q. Okay. And so what is the -- so some</p> <p>21 items have a check; some items have an</p> <p>22 asterisk. Do you know how this worked?</p> <p>23 A. Yeah. I don't know why there's an X or</p> <p>24 an asterisk. I think in each case, the X or</p>	<p style="text-align: right;">Page 251</p> <p>1 underwriting process. They had a credit</p> <p>2 policy. But, you know, over time, we wanted,</p> <p>3 I think, a little bit more. If they were</p> <p>4 going to hire a chief risk officer, for</p> <p>5 example, or if they needed to assess whether</p> <p>6 they needed a chief risk officer, some of that</p> <p>7 information is very detailed that those risk</p> <p>8 analysts and statisticians do.</p> <p>9 And so I believe, if I</p> <p>10 recall, this was a deep dive into that risk,</p> <p>11 kind of peeling back the onion a little bit</p> <p>12 and letting them look a little bit deeper into</p> <p>13 the credit scoring models. And that's a very</p> <p>14 difficult piece to get through. It takes</p> <p>15 awhile.</p> <p>16 Q. When you say they all had a credit</p> <p>17 policy, are we talking about the document we</p> <p>18 looked at before, the underwriting policy?</p> <p>19 A. I was referring to, like, the loan</p> <p>20 underwriting policy.</p> <p>21 Q. So like the one we looked at earlier</p> <p>22 from back in 2011, 2012?</p> <p>23 MR. SCHEFF: Object to the</p> <p>24 form.</p>
<p style="text-align: right;">Page 250</p> <p>1 the asterisk indicated that that function or</p> <p>2 that particular item was already completed for</p> <p>3 that particular tribal lending enterprise.</p> <p>4 Q. And you're not sure if there is a</p> <p>5 distinction between the X and the asterisk or</p> <p>6 whether it's like a degree of engagement or</p> <p>7 sophistication or anything like that?</p> <p>8 A. No, I don't recall us ever having any</p> <p>9 degrees. It was either done or not done.</p> <p>10 Q. But where it's blank, that means it's</p> <p>11 still a work in progress, right?</p> <p>12 A. That's what that would suggest. It</p> <p>13 shouldn't --</p> <p>14 Q. So under understanding credit policy,</p> <p>15 where basically none of the tribes are up to</p> <p>16 speed on that --</p> <p>17 MR. SCHEFF: Object to the</p> <p>18 form.</p> <p>19 MR. SHELDON: Object to form.</p> <p>20 BY MR. ACKELSBURG:</p> <p>21 Q. Isn't that what that says?</p> <p>22 A. I think this particular item was a deep</p> <p>23 dive into the credit underwriting, the</p> <p>24 decision engine. The tribes were aware of the</p>	<p style="text-align: right;">Page 252</p> <p>1 MR. SHELDON: Same objection.</p> <p>2 THE WITNESS: Yes.</p> <p>3 BY MR. ACKELSBURG:</p> <p>4 Q. Okay. And that's the policy that</p> <p>5 they're -- that according to this, they're</p> <p>6 still lacking some understanding of or --</p> <p>7 MR. SCHEFF: Object to the</p> <p>8 form.</p> <p>9 THE WITNESS: No. My</p> <p>10 recollection of this particular item was a --</p> <p>11 and it's probably just poorly worded. It was</p> <p>12 a deep dive into the components, the workings</p> <p>13 of the decision engine.</p> <p>14 BY MR. ACKELSBURG:</p> <p>15 Q. Okay. And the next item, collections</p> <p>16 strategy practices. Now, up until this time</p> <p>17 -- and as of this time from the beginning, the</p> <p>18 inception of the tribal products to this point</p> <p>19 in time, September 2014, the collections were</p> <p>20 all handled by some -- by an outsource, some</p> <p>21 agency outside of the tribe, right?</p> <p>22 A. That's correct.</p> <p>23 Q. Whether people paying, it's done -- the</p> <p>24 payments that were done by ACH, that's handled</p>

<p style="text-align: right;">Page 253</p> <p>1 by an ACH provider, right?</p> <p>2 A. Think Systems would identify the</p> <p>3 customers that had agreed to ACH, and then the</p> <p>4 loan system -- you know, there's a system</p> <p>5 built to create the daily ACH file for</p> <p>6 customers whose payments were due.</p> <p>7 Q. And then for customers that aren't</p> <p>8 paying, then there's contracts with collection</p> <p>9 agencies to do the actual calling and whatever</p> <p>10 it is that collection companies do, right?</p> <p>11 A. Correct.</p> <p>12 Q. Is collections strategies and practice,</p> <p>13 does that encompass both of those pieces of</p> <p>14 getting the payments into the -- getting the</p> <p>15 payments in the door?</p> <p>16 A. I don't recall the specifics around this</p> <p>17 particular item. I know that one of the</p> <p>18 pieces or my recollection of one of the pieces</p> <p>19 that we did assist the tribes with was</p> <p>20 workforce management.</p> <p>21 So we would assist with</p> <p>22 looking at the numbers of accounts that might</p> <p>23 be in collections on a given day and how many</p> <p>24 collection representatives their collection</p>	<p style="text-align: right;">Page 255</p> <p>1 Q. Well, it captures that it's aspirational</p> <p>2 as of that point in time, right?</p> <p>3 A. Yeah. This was something that they</p> <p>4 weren't doing currently that they wanted to</p> <p>5 do.</p> <p>6 Q. Right. Okay. And then down below in</p> <p>7 finance, in terms of understanding the flow of</p> <p>8 funds and self-service data, do you remember</p> <p>9 those discussions?</p> <p>10 A. No. This was our finance group that</p> <p>11 worked with the tribes on this particular</p> <p>12 item. I didn't get involved in the flow of</p> <p>13 funds discussion.</p> <p>14 Q. But it at least appears -- the results</p> <p>15 of this was that this was another area that</p> <p>16 was aspirational. It's not something tribes</p> <p>17 had much involvement in at that point in time.</p> <p>18 MR. SCHEFF: Object to the</p> <p>19 form.</p> <p>20 MR. SHELDON: Object to form.</p> <p>21 THE WITNESS: As indicated by</p> <p>22 the box not getting checked, this is something</p> <p>23 that they were interested in doing that at the</p> <p>24 moment -- at the time this was produced, they</p>
<p style="text-align: right;">Page 254</p> <p>1 vendor had staffed for that and whether or not</p> <p>2 some efficiencies that could be gained.</p> <p>3 So I think that part of this</p> <p>4 was to help train the tribes on how that type</p> <p>5 of analysis is done so that they could do that</p> <p>6 for themselves.</p> <p>7 Q. Now, you knew someone at Think named --</p> <p>8 I think his name was Gio Rodriguez?</p> <p>9 A. Yes.</p> <p>10 Q. And he was the one who was actually</p> <p>11 doing the monitoring of collections, or his</p> <p>12 group was doing the monitoring of the</p> <p>13 collection agencies?</p> <p>14 MR. SHELDON: Object to the</p> <p>15 form.</p> <p>16 THE WITNESS: Correct.</p> <p>17 BY MR. ACKELSBURG:</p> <p>18 Q. And so this is about whether the tribes</p> <p>19 could take on more of that responsibility?</p> <p>20 A. Again, I don't recall the specifics.</p> <p>21 But there were aspects of the collection</p> <p>22 strategies that the tribes were interested in</p> <p>23 taking more involvement with. And I think</p> <p>24 that's what this item captures.</p>	<p style="text-align: right;">Page 256</p> <p>1 weren't doing.</p> <p>2 BY MR. ACKELSBURG:</p> <p>3 Q. Okay. And finally, the -- do you see</p> <p>4 under product, it says, deep knowledge of</p> <p>5 product features?</p> <p>6 A. I see that.</p> <p>7 Q. And so none of the tribes got a check or</p> <p>8 an asterisk in that item either, at that point</p> <p>9 in time, right?</p> <p>10 A. I don't recall what this one was. It</p> <p>11 wasn't checked, but I don't recall what this</p> <p>12 particular item was talking about.</p> <p>13 Q. And this was -- again, we're talking</p> <p>14 about September 2014. And for Plain Green,</p> <p>15 this is three and a half years in, right?</p> <p>16 A. Correct.</p> <p>17 Q. And the other tribe is a little bit less</p> <p>18 time but still roughly three years, right?</p> <p>19 A. Roughly, yes.</p> <p>20 Q. Now, at this point in time, September of</p> <p>21 2014 -- and understanding that we're talking</p> <p>22 about a service provider, not a direct lender.</p> <p>23 I'm very aware of the distinction. But at</p> <p>24 that point in time, am I right that Think</p>

<p style="text-align: right;">Page 257</p> <p>1 Finance was servicing three products; Plain 2 Green, Great Plains Lending, and Mobiloans and 3 that was it? 4 A. Yes, that's my recollection at that 5 time, yes. 6 MR. ACKELSBURG: Just bear 7 with me for a second. I have one final area. 8 One final bunch of documents that I'm trying 9 to be selective with. 10 BY MR. ACKELSBURG: 11 Q. Did -- Mr. Smith, did the compliance 12 group play a role with regard to responding to 13 consumer complaints that were directed to one 14 of the three tribal lenders? 15 A. Can you clarify which compliance 16 department? 17 Q. Yours. 18 A. Yeah. Early in the relationship, we 19 assisted the tribal lenders with responses to 20 customer complaints. 21 Q. And what was the process? 22 A. Generally, the complaint would come in. 23 Someone in my group would review the 24 complaint, would review research, investigate</p>	<p style="text-align: right;">Page 259</p> <p>1 complaint that Plain Green received directly 2 from the Department of Financial Services of 3 New York and their response and how they 4 handled that particular complaint so that our 5 folks were aware of this particular customer 6 complaint. 7 Q. And the nature of the customer complaint 8 was that -- well, the letter actually comes 9 from the New York State Department of 10 Financial Services, right? 11 A. Correct. 12 Q. And they're basically advising Plain 13 Green that they at the department had received 14 a complaint from a New York citizen regarding 15 a loan originated by Plain Green, right? 16 A. Correct. 17 Q. And they refer to it as a Payday loan, 18 but you're familiar that there is confusion 19 between installment loan and Payday loan? 20 MR. SCHEFF: Object to the 21 form. 22 BY MR. ACKELSBURG: 23 Q. You're familiar with that confusion, 24 right?</p>
<p style="text-align: right;">Page 258</p> <p>1 the nature of the complaint, and provide a 2 response on behalf of the tribe to the 3 complainant. 4 Q. And sometimes those complaints 5 originated from state regulators or attorneys 6 general? 7 A. There were occasions when those types of 8 complaints came in, yes. 9 Q. So let's look at an example of that. 10 - - - 11 (Whereupon Exhibit P-239 was marked for 12 identification.) 13 - - - 14 BY MR. ACKELSBURG: 15 Q. Okay. Now you said that you were 16 assisting the tribe in dealing with complaints 17 early on in the process. We're looking at -- 18 what we're looking at is some activity in 19 November of 2015, right? 20 A. Yes. 21 Q. Okay. So -- well, why don't you explain 22 what we got here? What happened here? 23 A. Well, I sent an e-mail to several folks 24 within our company, just notifying them of a</p>	<p style="text-align: right;">Page 260</p> <p>1 MR. SHELTON: Object to form. 2 THE WITNESS: Yes, I'm 3 familiar with that. 4 BY MR. ACKELSBURG: 5 Q. And so the examiner from New York State 6 is basically saying the kind of loan that this 7 lady got from Plain Green is illegal in New 8 York, right? That's basically what he's 9 saying, right? 10 A. It states Payday Loans are illegal. 11 Q. Well -- right. That's what it states. 12 He's referring to the -- whatever it is 13 that Plain -- whatever you call the loan that 14 Ms. Jenkins got from Plain Green that the New 15 York examiner is referring to as a Payday 16 loan, he is saying that that loan product is 17 illegal in New York. That's the nature of the 18 complaint, right? 19 MR. SCHEFF: Object to the 20 form. 21 MR. SHELTON: Object to form. 22 THE WITNESS: That's the 23 nature, yes. 24 BY MR. ACKELSBURG:</p>

<p style="text-align: right;">Page 1</p> <p style="text-align: center;">IN THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF PENNSYLVANIA</p> <p style="text-align: center;">- - -</p> <p>COMMONWEALTH OF : PENNSYLVANIA : Plaintiff : : VS. : CIVIL ACTION NUMBER : 2:14-CV-07139 THINK FINANCE, INC., : ET AL., : Defendants : - - -</p> <p style="text-align: center;">JUNE 26, 2018</p> <p style="text-align: center;">- - -</p> <p>Videotaped deposition of STEVEN HAYNES, was taken pursuant to notice at 1735 Market Street, Philadelphia, Pennsylvania, beginning at or about 8:30 a.m. before Jeannine Cancelliere, Court Reporter and Notary Public and David Levin, Videotape Operator, there being present.</p> <p style="text-align: center;">KAPLAN, LEAMAN AND WOLFE Registered Professional Reporters 230 S. Broad Street, Suite 1303 Philadelphia, Pennsylvania 19102</p>	<p style="text-align: right;">Page 3</p> <p>1 APPEARANCES (continued)</p> <p>2</p> <p>3 GOODWIN PROCTER</p> <p>4 BY: MATTHEW SHELDON, ESQUIRE</p> <p>5 901 New York Avenue, NW</p> <p>6 Washington, D.C. 20001</p> <p>7 Phone: (202) 346-4000</p> <p>8 Representing Think Finance</p> <p>9 msheldon@goodwinlaw.com</p> <p>10</p> <p>11 VAN NESS FELDMAN</p> <p>12 BY: PATRICK DAUGHERTY, ESQUIRE</p> <p>13 1050 Thomas Jefferson Street, NW</p> <p>14 Washington, D.C. 20007-3877</p> <p>15 Phone: (202) 298-1800</p> <p>16 Representing National Credit</p> <p>17 Adjusters LLC</p> <p>18 pod@vnf.com</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p>
<p style="text-align: right;">Page 2</p> <p>1 APPEARANCES:</p> <p>2</p> <p>3 LANGER, GROGAN & DIVER, P C</p> <p>4 BY: IRV ACKELSBURG, ESQUIRE</p> <p>5 BY: JOHN J GROGAN, ESQUIRE</p> <p>6 1717 Arch Street, Suite 4130</p> <p>7 Philadelphia, Pennsylvania 19103</p> <p>8 Phone: (215) 320-5701</p> <p>9 Representing the Plaintiff</p> <p>10 jgrogan@langergrogan.com</p> <p>11</p> <p>12 ATTORNEY GENERAL'S OFFICE</p> <p>13 BY: SAVERIO MIRARCHI, ESQUIRE</p> <p>14 1600 Arch Street, 3rd Floor</p> <p>15 Philadelphia, Pennsylvania 19103</p> <p>16 Phone: (215) 560-2445</p> <p>17 Representing the Defendant</p> <p>18 smirarchi@attorneygeneral.gov</p> <p>19</p> <p>20 MONTGOMERY McCracken</p> <p>21 BY: RICHARD SCHEFF, ESQUIRE</p> <p>22 BY: DAVID HERMAN, ESQUIRE</p> <p>23 123 South Broad Street</p> <p>24 Philadelphia, Pennsylvania 19109</p> <p>Phone: (215) 772-7228</p> <p>Representing Ken Rees</p> <p>rscheff@mmwr.com</p> <p>KATTEN, MUCHIN, ROSENMAN LLP</p> <p>BY: DANIEL SHAPIRO, ESQUIRE</p> <p>BY: J MATTHEW HAWS, ESQUIRE</p> <p>525 W Monroe Street</p> <p>Chicago, Illinois 60661-3693</p> <p>Phone: (312) 902-5319</p> <p>Representing Victory Park</p> <p>matthew.haws@kattenlaw.com</p>	<p style="text-align: right;">Page 4</p> <p>1 INDEX</p> <p>2 - - -</p> <p>3 STEVEN HAYNES PAGE</p> <p>4 BY MR. ACKELSBURG 8</p> <p>5 BY MR. SHELDON 302</p> <p>6 BY MR. DAUGHERTY 308</p> <p>7 - - -</p> <p>8 EXHIBITS</p> <p>9 - - -</p> <p>10 EXHIBIT NO. PAGE</p> <p>11 Haynes-1 12</p> <p>12 P-337 20</p> <p>13 P-338 80</p> <p>14 P-339 85</p> <p>15 P-340 123</p> <p>16 P-341 130</p> <p>17 P-342 134</p> <p>18 P-343 135</p> <p>19 P-344 141</p> <p>20 P-345 142</p> <p>21 P-346 147</p> <p>22 P-347 149</p> <p>23 P-348 154</p> <p>24 P-349 164</p>

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<p>1 EXHIBITS (continued)</p> <p>2 EXHIBIT NO. PAGE</p> <p>3 P-350 168</p> <p>4 P-351 173</p> <p>5 P-352 187</p> <p>6 P-353 211</p> <p>7 P-354 217</p> <p>8 P-355 219</p> <p>9 P-356 220</p> <p>10 P-357 223</p> <p>11 P-358 233</p> <p>12 P-359 238</p> <p>13 P-360 241</p> <p>14 P-361 243</p> <p>15 P-362 253</p> <p>16 P-363 256</p> <p>17 P-364 259</p> <p>18 P-365 260</p> <p>19 P-366 261</p> <p>20 P-367 266</p> <p>21 P-368 274</p> <p>22 P-369 277</p> <p>23 P-370 281</p> <p>24 P-371 282</p>	<p>1 - - -</p> <p>2 EXAMINATION</p> <p>3 - - -</p> <p>4 BY MR. ACKELSBERG:</p> <p>5 Q. Good morning, Mr. Haynes.</p> <p>6 A. Good morning.</p> <p>7 Q. We just met. My name, again, is Irv</p> <p>8 Ackelsberg, and I am one of the lawyers</p> <p>9 representing the Commonwealth of Pennsylvania</p> <p>10 in this matter.</p> <p>11 Can you state the -- what's</p> <p>12 your home address?</p> <p>13 A. 4215 San Carlos Street, Dallas, Texas.</p> <p>14 Q. Do you have a different business</p> <p>15 address?</p> <p>16 A. I do.</p> <p>17 Q. What's that?</p> <p>18 A. 7515 Lemmon Avenue, Hangar R, Dallas,</p> <p>19 Texas.</p> <p>20 Q. Hangar R, is that in an airport?</p> <p>21 A. It is.</p> <p>22 Q. Why do you have an office in an airport?</p> <p>23 A. Very cheap space.</p> <p>24 Q. Have you been deposed before?</p>
Page 6	Page 8
<p>1 VIDEOTAPE OPERATOR: We're now</p> <p>2 on the record my name is David Levin. I am</p> <p>3 the videographer employed by On the Record.</p> <p>4 This is a video deposition in the United</p> <p>5 States District Court for the Eastern District</p> <p>6 of Pennsylvania, Civil Action No.</p> <p>7 2:14-CV-07139.</p> <p>8 Today's date is Tuesday, June</p> <p>9 26th, 2018, and the video time is 8:38 a.m.</p> <p>10 This deposition is being held at 1735 Market</p> <p>11 Street, 21st Floor, Philadelphia,</p> <p>12 Pennsylvania, in the matter of Commonwealth of</p> <p>13 Pennsylvania versus Think Finance,</p> <p>14 Incorporated, et al.</p> <p>15 The deponent is Steven Haynes.</p> <p>16 All counsel will be noted on the stenographic</p> <p>17 record. The court reporter is Jeannine</p> <p>18 Cancelliere. She'll now swear in the witness.</p> <p>19 - - -</p> <p>20 STEVEN HAYNES, after having been</p> <p>21 first duly sworn, was examined and testified</p> <p>22 as follows:</p> <p>23 VIDEOTAPE OPERATOR: Please</p> <p>24 proceed, counsel.</p>	<p>1 A. I have.</p> <p>2 Q. How many times?</p> <p>3 A. Once for sure, maybe twice.</p> <p>4 Q. The one for sure, what case was that?</p> <p>5 A. It was a divorce case of a business</p> <p>6 partner of mine.</p> <p>7 Q. I don't care about that divorce case.</p> <p>8 What about the other case?</p> <p>9 A. It was an accident case.</p> <p>10 Q. Okay. So nothing pertaining to your</p> <p>11 business activities?</p> <p>12 A. No.</p> <p>13 Q. I assume your lawyer has explained to</p> <p>14 you the procedures and -- but I need to go</p> <p>15 over them just to make sure that we're on the</p> <p>16 same page.</p> <p>17 So what's going to happen is</p> <p>18 as we proceed today, I am going to be asking</p> <p>19 you questions. You're going to be answering</p> <p>20 those questions to the best of your ability.</p> <p>21 There may be some comment from the lawyers in</p> <p>22 the room. Everything that is spoken is going</p> <p>23 to be taken down by the court reporter, who's</p> <p>24 sitting at your left.</p>

<p style="text-align: right;">Page 49</p> <p>1 by tribes, Native American tribes. 2 Q. And when a tribe owns a bank, that's 3 really referring to the investment behind the 4 bank, right? 5 MR. SCHEFF: Object to the 6 form. You can answer. 7 BY MR. ACKELSBURG: 8 Q. The ownership behind the bank, correct? 9 MR. SCHEFF: Object to the 10 form. You can answer the question. 11 BY MR. ACKELSBURG: 12 Q. That's what you're referring to? 13 MR. SCHEFF: Object to the 14 form. Which question do you want him to 15 answer? 16 BY MR. ACKELSBURG: 17 Q. Go ahead. 18 MR. SCHEFF: Answer whichever 19 question you choose, Mr. Haynes. Just tell 20 him which one you're answering. 21 BY MR. ACKELSBURG: 22 Q. You're familiar with some Native 23 American-owned banks in the country, correct? 24 A. Yes, sir.</p>	<p style="text-align: right;">Page 51</p> <p>1 2017 timeframe. But this is back in 2013, two 2 years into the Plain Green venture. 3 Do you remember any meetings 4 with Victory Park back then? 5 MR. SHAPIRO: Object to the 6 form. Back when? 7 BY MR. ACKELSBURG: 8 Q. 2013. At the time that Mr. Dunleavy was 9 introducing you to Victory Park. 10 A. I remember meeting with Victory Park. I 11 can't pinpoint the date. 12 Q. Who did you meet with at Victory Park? 13 A. It would have been -- Tom Welch was the 14 person I met with at Victory Park. 15 Q. When's the first time you met Tom Welch? 16 A. I don't remember. 17 Q. What did you discuss? 18 A. The first time I remember meeting him, 19 we discussed, you know, broad investment 20 concepts and how we each did business. 21 Q. And were you specifically talking about 22 Native American tribes? 23 A. It was a larger discussion than that. 24 Q. But that included tribes?</p>
<p style="text-align: right;">Page 50</p> <p>1 Q. Okay. A Native American bank would 2 still need to be regulated by one of the 3 federal regulators, correct? 4 MR. SCHEFF: Object to the 5 form; calls for a legal conclusion. You can 6 answer the question. 7 THE WITNESS: I don't know. 8 BY MR. ACKELSBURG: 9 Q. Are you aware of any -- have you ever 10 heard of a Native American bank that was not 11 regulated by the OCC or the Federal Reserve or 12 the FDIC? 13 A. I don't know. 14 Q. Okay. Did anything ever come of this 15 communication with Think Finance? Did you get 16 a meeting with Think Finance? I'm sorry. I 17 said Think Finance. I meant Victory Park. 18 A. I have had meetings with Victory Park. 19 I'm not sure if they came as a direct result 20 of this e-mail or not. 21 Q. We're going to be talking about -- there 22 was -- at a previous deposition, we learned 23 about there was a perspective deal that you 24 were discussing with Victory Park in the 2016,</p>	<p style="text-align: right;">Page 52</p> <p>1 A. It would have, yes. 2 Q. And it wasn't specifically about Think 3 Finance? 4 A. No, sir. 5 Q. It was about broader opportunities 6 beyond Think Finance? 7 MR. SCHEFF: Object to the 8 form. You can answer the question. 9 THE WITNESS: Yes. 10 BY MR. ACKELSBURG: 11 Q. Do you remember anyone else at the 12 meeting with Tom Welch, anyone else at Victory 13 Park, or was it just a one-on-one with you and 14 Mr. Welch? 15 A. Terry Dunleavy would have accompanied 16 me, and I believe there was one or two other 17 people that came in and out of the meeting 18 from the Victory Park side. 19 Q. Was this at Victory Park's offices in 20 Chicago? 21 A. Yes, sir. 22 Q. Can you give us a rough timeframe for 23 when this happened? 24 A. I don't remember.</p>

<p style="text-align: right;">Page 53</p> <p>1 Q. When's the last time -- is Mr. Dunleavy 2 still representing you? 3 A. He does. 4 Q. Was the initial deal that you did 5 involving Think and the Rocky Boy Chippewa 6 Cree the biggest tribal lending deal you've 7 been involved in? 8 MR. SCHEFF: Object to the 9 form. You can answer the question. 10 THE WITNESS: Yes. 11 BY MR. ACKELSBURG: 12 Q. Is it the biggest in terms of the volume 13 of loans generated by the business? 14 A. I don't know how many loans they've 15 generated. 16 Q. Well, in terms of -- but it's the 17 biggest in terms of the most cash generated 18 for you though, correct? 19 A. That's correct. 20 Q. Why was that deal so lucrative? What 21 were the aspects of that deal that made it 22 especially lucrative for you? 23 A. Think Finance had decided that instead 24 of paying me a flat fee for making the</p>	<p style="text-align: right;">Page 55</p> <p>1 with the tribe before you had a relationship 2 with Think Finance, correct? 3 A. That's correct. 4 Q. That's why Think Finance was interested 5 in developing a relationship with you, 6 correct? 7 MR. SCHEFF: Object to the 8 form. You can answer the question. 9 MR. SHELDON: Objection -- 10 BY MR. ACKELSBURG: 11 Q. As best as you understand. 12 MR. SHELDON: Object to form. 13 MR. ACKELSBURG: I'll 14 withdraw. I'll restate the question. 15 BY MR. ACKELSBURG: 16 Q. You spent time on the Rocky Boy 17 reservation in Box Elder, Montana? 18 A. Yes, I have. 19 Q. Okay. How many times have you been 20 there? 21 A. Half a dozen. 22 Q. When was the first time? 23 A. I'm not sure. 24 Q. Approximately?</p>
<p style="text-align: right;">Page 54</p> <p>1 connection, they were going to pay me a 2 percent of collected revenues. 3 Q. Good deal, huh? 4 MR. SCHEFF: Object to the 5 form. You can answer the question. 6 THE WITNESS: It was a very 7 good deal for me. 8 BY MR. ACKELSBURG: 9 Q. Why would they want to give you -- do 10 you have any sense of why they'd want to give 11 you 1 percent of their revenues? 12 MR. SHELDON: Object to the 13 form. 14 THE WITNESS: I believe at 15 the time in our discussions, it was not that 16 they wanted to give me 1 percent of the 17 revenues. They just did not want to give me a 18 large flat fee for finding them a tribe. 19 BY MR. ACKELSBURG: 20 Q. Let's move to the beginning of this 21 relationship with Think Finance and the Rocky 22 Boy Chippewa Cree. 23 How did you get connected 24 to -- did you have a -- you had a relationship</p>	<p style="text-align: right;">Page 56</p> <p>1 A. Approximately 2006. 2 Q. Okay. And when's the most recent time? 3 A. Probably around 2011. 4 Q. When the deal was first set up with 5 Think Finance? 6 MR. SCHEFF: Object to the 7 form. You can answer the question. 8 THE WITNESS: Correct. 9 BY MR. ACKELSBURG: 10 Q. How would you describe -- describe the 11 reservation in Box Elder for me? 12 A. It is poor. It is disheveled. It's 13 beautiful. 14 Q. Would it be correct to say it is also 15 very remote? 16 A. It is extremely remote. 17 Q. Would I be correct to say that the 18 biggest population center is probably Great 19 Falls, which is roughly two hours away? 20 A. Yeah, that's pretty safe to say. 21 Q. Okay. On the Canadian -- it's near the 22 Canadian border, correct? 23 A. Correct. 24 Q. But there's no population centers -- big</p>

<p style="text-align: right;">Page 57</p> <p>1 population centers in Canada near Box Elder 2 either; am I right? 3 A. I don't remember. I think you're 4 correct. 5 Q. What economic activity, if any, exists 6 at Box Elder? 7 MR. SCHEFF: Object to the 8 form. You can answer the question if you can. 9 BY MR. ACKELSBURG: 10 Q. That you recall. 11 A. They had an oil and gas industry on the 12 reservation. They had a casino. 13 Q. That's about it? 14 A. That's about it. 15 Q. Those half a dozen times that you were 16 in Box Elder, how did you get there? 17 A. I would fly to Great Falls or someplace 18 close and rent a car and drive for a very long 19 time. 20 Q. Now, the company that financed the 21 casino that you mentioned, that's a company 22 called BEH Gaming, correct? 23 A. That's correct. 24 Q. Okay. Now, do you have any connection</p>	<p style="text-align: right;">Page 59</p> <p>1 to take your deposition. 2 MR. SCHEFF: Let's go off. 3 VIDEOTAPE OPERATOR: 9:36, 4 off the record. 5 - - - 6 (Whereupon a short break was taken at this 7 time.) 8 - - - 9 VIDEOTAPE OPERATOR: 9:42, 10 we're back on the record. 11 BY MR. ACKELSBURG: 12 Q. So the casino that's on the Rocky Boy 13 reservation, it's called the Northern Winds 14 Casino? 15 A. I believe that's correct. 16 Q. So your role with regard to the casino 17 was supplying the slot machines? 18 MR. SCHEFF: Object to the 19 form. You can answer if you can. 20 THE WITNESS: I supplied them 21 slot machines later in the life of the casino. 22 I was not involved in the building or the 23 opening of the casino. 24 BY MR. ACKELSBURG:</p>
<p style="text-align: right;">Page 58</p> <p>1 to that company or to the principals of that 2 company? 3 MR. SCHEFF: Object to the 4 form. You can answer the question. 5 THE WITNESS: I have no 6 connection to the company. I know the 7 principals. 8 BY MR. ACKELSBURG: 9 Q. Okay. And who are they, the principals? 10 MR. SCHEFF: Irv, if this has 11 something to do with the eventual relationship 12 with Think Finance, then I don't have a 13 problem with this question. But it if 14 doesn't, then we're just not going to his 15 other business relationships. It's just none 16 of your business. 17 BY MR. ACKELSBURG: 18 Q. You can answer the question. 19 MR. SCHEFF: You can't answer 20 the question. Does it have a relationship? 21 MR. ACKELSBURG: Yes. 22 MR. SCHEFF: Okay. What's 23 the relationship? 24 MR. ACKELSBURG: I'm not here</p>	<p style="text-align: right;">Page 60</p> <p>1 Q. Okay. So the developer of the casino 2 was BEH, right? 3 A. I believe that to be correct, yes. 4 Q. Okay. And at some point after it was 5 opened, you developed a contract -- you had an 6 agreement with the tribe to lease slot 7 machines, like you were talking about before? 8 MR. SCHEFF: Object to the 9 form. You can answer the question. 10 THE WITNESS: I was -- 11 entered into a revenue agreement to lease 12 machines to the tribe, to the casino, correct. 13 BY MR. ACKELSBURG: 14 Q. Okay. And through what business name 15 was your slot machine contract with the 16 Chippewa Cree? 17 A. I believe it was AGame NV. It may have 18 been Tribal Gaming Solutions. I'm not sure 19 which one. It may have been both. 20 Q. AGame NV was a business -- who is your 21 partner in that business? 22 A. Ray Brown. 23 Q. And is Ray Brown connected to BEH 24 Gaming?</p>

<p style="text-align: right;">Page 61</p> <p>1 MR. SCHEFF: Object to the 2 form. 3 THE WITNESS: I'm not sure. 4 BY MR. ACKELSBURG: 5 Q. How did you meet Ray Brown? 6 A. I met Ray Brown in Dallas years before. 7 He and a partner he had then came to my office 8 looking for capital at the time for Indian 9 gaming machine leasing. 10 Q. Was Mr. Brown the one who connected you 11 to the Chippewa Cree that led to the slot 12 machine deal at the Northern Winds Casino? 13 MR. SCHEFF: Object to the 14 form. You can answer the question. 15 THE WITNESS: Yes, Mr. Brown 16 introduced me to the Chippewa Cree. 17 BY MR. ACKELSBURG: 18 Q. As a result of that, you and Mr. Brown 19 created this LLC called AGame NV? 20 MR. SCHEFF: Object to the 21 form. You can answer the question. 22 THE WITNESS: I don't 23 remember it being specifically for or starting 24 with Chippewa Cree.</p>	<p style="text-align: right;">Page 63</p> <p>1 getting a piece of the action at the Northern 2 Winds Casino? 3 MR. SCHEFF: Object to the 4 form. You can answer the question if you can. 5 THE WITNESS: Mr. Brown, you 6 know, yes, brought it to our attention -- my 7 attention, the opportunity to lease slot 8 machines to the Northern Winds Casino. 9 BY MR. ACKELSBURG: 10 Q. And then how does this work? Do you and 11 Mr. Brown raise money to do this? Do you have 12 investors? Did you have investors in 13 AGame NV? 14 MR. SCHEFF: Why is this -- 15 how is this relevant to this case, Mr. 16 Ackelsberg? I mean, honestly, how is this 17 relevant? 18 MR. ACKELSBURG: We'll get 19 back to AGame NV later. That's why. 20 MR. SCHEFF: Okay. 21 BY MR. ACKELSBURG: 22 Q. Now, the deal that you signed with the 23 Chippewa Cree for the slot machines, was there 24 any paperwork connected to that deal?</p>
<p style="text-align: right;">Page 62</p> <p>1 BY MR. ACKELSBURG: 2 Q. But when you first met Mr. Brown, I 3 mean, you weren't talking specifically about 4 the Chippewa Cree, you were talking more 5 generally about providing machines to tribal 6 casinos, correct? 7 MR. SCHEFF: Object to the 8 form. 9 THE WITNESS: When Mr. Brown 10 came to our offices, he was looking for 11 financing for a whole host of gaming-related 12 opportunities in and off reservations. 13 BY MR. ACKELSBURG: 14 Q. And then at some time you and Mr. Brown 15 decided to create a business together? 16 A. That's correct. 17 Q. Okay. And what was the purpose of that 18 business? 19 A. The purpose of AGame was to develop 20 and -- develop tribal casinos, commercial 21 casinos, and to lease slot machines to those 22 casinos. 23 Q. And at some point, Mr. Brown brought to 24 your attention the possibility of AGame NV</p>	<p style="text-align: right;">Page 64</p> <p>1 MR. SCHEFF: Object to the 2 form. You can answer the question. 3 THE WITNESS: There were 4 always signed contracts with our agreements. 5 BY MR. ACKELSBURG: 6 Q. Did you provide those signed contracts 7 either to your lawyers at Dinsmore or to your 8 lawyers here at Montgomery McCracken? 9 A. I provided access to all of my files, 10 both on my computer and online and my file 11 cabinets. 12 Q. And that would include the contract for 13 the slot machines with the Chippewa Cree? 14 A. If they still exist, yes. 15 Q. Now, at the time that -- now, is the 16 first time that you went to the Rocky Boy 17 reservation to investigate the possibility of 18 the deal for the slot machine? 19 MR. SCHEFF: Object to the 20 form. 21 THE WITNESS: No, sir. 22 BY MR. ACKELSBURG: 23 Q. What was the occasion for your first 24 trip to the Rocky Boy reservation?</p>

<p style="text-align: right;">Page 65</p> <p>1 A. I believe my first trip, the casino was</p> <p>2 under construction and they were looking for</p> <p>3 help with their oil and gas leases.</p> <p>4 Q. And who was looking for help, the tribe?</p> <p>5 A. The tribal oil and gas corporation that</p> <p>6 they owned.</p> <p>7 Q. I see. And Mr. Brown made that</p> <p>8 connection for you with the tribe?</p> <p>9 A. Yes, sir.</p> <p>10 Q. So this was after the meeting in Dallas</p> <p>11 with Mr. Brown? He connected you to the tribe</p> <p>12 with regard to an oil and gas lease?</p> <p>13 A. Yes, sir.</p> <p>14 Q. Okay. And did you have a contract with</p> <p>15 the Chippewa Cree on an oil and gas deal?</p> <p>16 A. No, sir. After investigating the</p> <p>17 opportunity, there was no business to be done.</p> <p>18 Q. Okay. And would the next time you went</p> <p>19 up there, that would -- the next time you went</p> <p>20 up there would have been with regard to the</p> <p>21 slot machines?</p> <p>22 A. I'm not sure. There was another</p> <p>23 opportunity to build hotels and multifamily</p> <p>24 housing up there. And then after that -- or</p>	<p style="text-align: right;">Page 67</p> <p>1 correct?</p> <p>2 A. That's correct.</p> <p>3 Q. Now, with the slot machines, for</p> <p>4 example, who at the tribe were you dealing</p> <p>5 with?</p> <p>6 A. I don't remember specifically.</p> <p>7 Traditionally, we deal with the general</p> <p>8 manager of the casino.</p> <p>9 Q. You weren't dealing with anyone in the</p> <p>10 tribal council, that you remember?</p> <p>11 A. I had met members of the tribal council.</p> <p>12 But the way the businesses always work is you</p> <p>13 go to the general manager because they had the</p> <p>14 knowledge of what they need on the</p> <p>15 reservation.</p> <p>16 Q. And you don't remember who that general</p> <p>17 manager was?</p> <p>18 A. I don't remember his name, no.</p> <p>19 Q. Okay. So how did the first connection</p> <p>20 with Think Finance happen?</p> <p>21 MR. SCHEFF: Object to the</p> <p>22 form. You can answer the question.</p> <p>23 THE WITNESS: My attorney,</p> <p>24 Tim Anderson.</p>
<p style="text-align: right;">Page 66</p> <p>1 previous with the slot machines, there was</p> <p>2 business opportunities growing out of</p> <p>3 Mr. Brown's relationship with the tribe.</p> <p>4 Q. But none of them came to fruition?</p> <p>5 A. No, sir.</p> <p>6 Q. Now, with regard to the casino, given</p> <p>7 how remote that reservation is, what was the</p> <p>8 business plan for getting people to come to</p> <p>9 the casino?</p> <p>10 MR. SCHEFF: Object to the</p> <p>11 form. You can answer the question if you can.</p> <p>12 Again, I don't know how this is on point,</p> <p>13 Mr. Ackelsberg, to this case. You can answer</p> <p>14 the question if you can.</p> <p>15 THE WITNESS: That's a very</p> <p>16 good question. I wasn't invested in the</p> <p>17 casino. I don't know what their business plan</p> <p>18 was.</p> <p>19 BY MR. ACKELSBURG:</p> <p>20 Q. Now, was Mr. Brown also the one who</p> <p>21 connected you? Did Mr. -- well, you already</p> <p>22 had a relationship -- before the Think Finance</p> <p>23 deal happened, you already had this</p> <p>24 pre-existing relationship with the tribe,</p>	<p style="text-align: right;">Page 68</p> <p>1 BY MR. ACKELSBURG:</p> <p>2 Q. At Pepper?</p> <p>3 A. At Pepper Hamilton. Introduced me to</p> <p>4 Rick Eckman, who is also an attorney there who</p> <p>5 was working with Think Finance to help them</p> <p>6 find a tribe to partner with.</p> <p>7 Q. So tell us what happened.</p> <p>8 A. I met with Tim, talked to Rick Eckman on</p> <p>9 the phone. He set up a conference call</p> <p>10 with -- or a call between myself and Jason</p> <p>11 Harvison, and Jason came over after that phone</p> <p>12 call and showed me a presentation of what it</p> <p>13 is they were trying to accomplish. And I</p> <p>14 thought it was interesting; I thought I could</p> <p>15 help them.</p> <p>16 Q. The meeting with Tim Anderson, was that</p> <p>17 at Pepper's office in Philly.</p> <p>18 A. No, it was not.</p> <p>19 Q. Where was it?</p> <p>20 A. It was either -- I'm not sure where it</p> <p>21 was. I don't know.</p> <p>22 Q. Okay. And so you met with Mr. Anderson.</p> <p>23 He got Eckman on the phone, and this was</p> <p>24 basically Eckman presenting a potential</p>

<p style="text-align: right;">Page 69</p> <p>1 business opportunity to you?</p> <p>2 MR. SCHEFF: Object to the</p> <p>3 form. You can answer the question. Misstates</p> <p>4 the testimony. Go ahead.</p> <p>5 THE WITNESS: Yeah, with Tim</p> <p>6 and Rick on the phone, I was asked if I would</p> <p>7 be interested in looking at opportunities with</p> <p>8 tribes.</p> <p>9 BY MR. ACKELSBURG:</p> <p>10 Q. Okay. So was that it? Did -- was there</p> <p>11 any discussion of what kind of a relation -- I</p> <p>12 mean, what do you remember Mr. Eckman telling</p> <p>13 you about this business opportunity?</p> <p>14 A. I don't remember much. It was a lending</p> <p>15 business, and it was installment loans. I</p> <p>16 call them micro loans. I don't remember much</p> <p>17 about the first call. There was not much to</p> <p>18 know.</p> <p>19 Q. What, if anything, did you know about</p> <p>20 online lending at the time?</p> <p>21 A. Zero.</p> <p>22 Q. Were you invested at all in the payday</p> <p>23 loan industry or online loans?</p> <p>24 A. No, sir. Never heard of it before.</p>	<p style="text-align: right;">Page 71</p> <p>1 answered.</p> <p>2 THE WITNESS: There was no --</p> <p>3 they wanted to expand their business.</p> <p>4 BY MR. ACKELSBURG:</p> <p>5 Q. So all you knew was that they're in the</p> <p>6 lending business; they wanted to expand their</p> <p>7 business. And in order to do that, they</p> <p>8 needed a tribe?</p> <p>9 MR. SCHEFF: Object to the</p> <p>10 form.</p> <p>11 BY MR. ACKELSBURG:</p> <p>12 Q. Is that basically what you understood at</p> <p>13 that point before you got into more detail?</p> <p>14 MR. SCHEFF: Objection;</p> <p>15 misstates the testimony. You can answer the</p> <p>16 question.</p> <p>17 THE WITNESS: As a person who</p> <p>18 created or tried to create economic</p> <p>19 development for tribes, I would get -- from</p> <p>20 trade shows, phone calls, meeting people --</p> <p>21 opportunities all day, everyday, of people</p> <p>22 that had some conception of why they wanted to</p> <p>23 move to a tribe to do business. And I was</p> <p>24 a -- I helped facilitate those people meeting</p>
<p style="text-align: right;">Page 70</p> <p>1 Q. Okay. So what exactly was your interest</p> <p>2 in getting involved?</p> <p>3 MR. SCHEFF: Object to the</p> <p>4 form; misstates the testimony. You can answer</p> <p>5 the question.</p> <p>6 THE WITNESS: Whenever I</p> <p>7 could put a tribe together with a commercial</p> <p>8 opportunity to help, one, spur economic</p> <p>9 development in the tribe and, two, get</p> <p>10 paycheck, I was interested.</p> <p>11 BY MR. ACKELSBURG:</p> <p>12 Q. Had you heard of Think Finance before?</p> <p>13 A. No, sir.</p> <p>14 Q. Before deals were signed, did you do any</p> <p>15 investigation or due diligence on Think</p> <p>16 Finance?</p> <p>17 A. Aside from probably Googling them, if</p> <p>18 that existed then, or doing some sort of</p> <p>19 general checks, no.</p> <p>20 Q. What was your understanding about why</p> <p>21 Think Finance was looking for a tribal</p> <p>22 partner?</p> <p>23 MR. SCHEFF: Object to the</p> <p>24 form. You can answer the question. Asked and</p>	<p style="text-align: right;">Page 72</p> <p>1 tribes that I thought fit the bill for what</p> <p>2 they needed to get the business done.</p> <p>3 I honestly did not go into</p> <p>4 very much depth or detail about what kind of</p> <p>5 businesses, because the tribes had legal</p> <p>6 representation. They had councils and</p> <p>7 presidents. They had experts that ran the</p> <p>8 specific businesses or if they didn't, they</p> <p>9 had to find one.</p> <p>10 I don't know how to drill an</p> <p>11 oil well, but I could find a drilling company</p> <p>12 that was interested in talking to a tribe.</p> <p>13 There's just many, many examples.</p> <p>14 So, no, when an opportunity</p> <p>15 first showed up, I just tried to see if there</p> <p>16 was a fit somewhere.</p> <p>17 BY MR. ACKELSBURG:</p> <p>18 Q. I'm going to show you a document that</p> <p>19 was previously marked as P-126.</p> <p>20 A. Yes, sir.</p> <p>21 Q. So do you recognize this as the</p> <p>22 nondisclosure agreement between Think Finance</p> <p>23 and the tribe?</p> <p>24 A. It's a nondisclosure agreement signed by</p>

<p style="text-align: right;">Page 73</p> <p>1 Think Finance and the chairman of the Chippewa</p> <p>2 Cree tribe, correct.</p> <p>3 Q. Okay. And this was signed as a result</p> <p>4 of the connection you made between Think</p> <p>5 Finance and the tribe, right?</p> <p>6 MR. SCHEFF: Object to the</p> <p>7 form. You can answer the question.</p> <p>8 THE WITNESS: The first</p> <p>9 sentence, "In connection with the ongoing</p> <p>10 discussions and our negotiations produced and</p> <p>11 facilitated by AGame NV and the tribe and</p> <p>12 Think Finance" -- so that's correct, yes.</p> <p>13 BY MR. ACKELSBURG:</p> <p>14 Q. So this is the company that -- AGame,</p> <p>15 that we were talking about before that's</p> <p>16 basically an LLC between you and Mr. Brown,</p> <p>17 right?</p> <p>18 A. AGame is a -- AGame NV, LLC, yes, is</p> <p>19 owned by Mr. Brown and myself.</p> <p>20 Q. And -- now, before this deal, had you</p> <p>21 and Mr. Brown conducted any other business</p> <p>22 using the name AGame NV?</p> <p>23 A. I don't know specifically. I'm sure we</p> <p>24 did.</p>	<p style="text-align: right;">Page 75</p> <p>1 form.</p> <p>2 THE WITNESS: Yes, sir. We</p> <p>3 had --</p> <p>4 BY MR. ACKELSBURG:</p> <p>5 Q. Okay. What was it about the Rocky Boy</p> <p>6 reservation that suggested to you and</p> <p>7 Mr. Brown that they might be the ones to</p> <p>8 approach regarding Think Finance's search for</p> <p>9 a tribe?</p> <p>10 MR. SCHEFF: Object to the</p> <p>11 form. You can answer the question. Go ahead.</p> <p>12 THE WITNESS: In any</p> <p>13 opportunity, Ray and I or I by myself or I and</p> <p>14 another partner, if something came up outside</p> <p>15 of using AGame, we'd look at the specific</p> <p>16 opportunity and decide or try to set</p> <p>17 parameters that would allow a tribe to be</p> <p>18 successful. So there are roughly 562 tribes,</p> <p>19 give or take one that fall off or come on</p> <p>20 every year in the United States, and all of</p> <p>21 them are uniquely positioned for a specific</p> <p>22 business.</p> <p>23 And in this case, we set some</p> <p>24 parameters, and it would have been something</p>
<p style="text-align: right;">Page 74</p> <p>1 Q. Well, did -- so was Ray Brown involved</p> <p>2 in making the connection to Think Finance, or</p> <p>3 was that just Pepper Hamilton?</p> <p>4 MR. SCHEFF: Object to the</p> <p>5 form. You can answer the question.</p> <p>6 THE WITNESS: The</p> <p>7 introduction came through Tim Anderson, to me.</p> <p>8 I don't believe that Ray Brown was involved in</p> <p>9 that.</p> <p>10 BY MR. ACKELSBURG:</p> <p>11 Q. Do you remember discussing the idea or</p> <p>12 discussing the approach that you -- from --</p> <p>13 the information that you learned by talking to</p> <p>14 Mr. Anderson and Mr. Eckman, did you</p> <p>15 communicate that with Mr. Brown?</p> <p>16 A. Yes.</p> <p>17 Q. Okay. And what did you discuss?</p> <p>18 A. We discussed what kind of tribe would</p> <p>19 fit the parameters needed to be able to own</p> <p>20 and operate an online lending business.</p> <p>21 Q. Okay. And so you and Mr. Brown at that</p> <p>22 point had dealings with a number of tribes</p> <p>23 around the country, correct?</p> <p>24 MR. SCHEFF: Object to the</p>	<p style="text-align: right;">Page 76</p> <p>1 like you had to have an ongoing casino because</p> <p>2 you needed to understand compliance and</p> <p>3 reporting because there are rules and</p> <p>4 regulations that came over lending.</p> <p>5 You would need -- again, a</p> <p>6 casino was helpful because you would need good</p> <p>7 communication lines, T1, T3, so that you could</p> <p>8 have data and servers and have access to the</p> <p>9 outside world using the Internet.</p> <p>10 You'd probably need -- you</p> <p>11 would need some kind of education or classes</p> <p>12 served to the people of the reservation that</p> <p>13 would help them in some form, like accounting</p> <p>14 or customer service. And we'd just usually go</p> <p>15 through a checklist and see how good the high</p> <p>16 school was; was there junior college or a</p> <p>17 community college on campus or nearby; was it</p> <p>18 a stable government? We always look at that</p> <p>19 just for -- in general terms.</p> <p>20 So we would have checklist we</p> <p>21 would go through to see if something was, you</p> <p>22 know, was a good fit.</p> <p>23 BY MR. ACKELSBURG:</p> <p>24 Q. Did you and Mr. Brown actually go</p>

<p style="text-align: right;">Page 77</p> <p>1 through a checklist for this -- with regard to</p> <p>2 online lending, a checklist concerning the</p> <p>3 Rocky Boy reservation?</p> <p>4 A. Yes, sir. We would have discussed all</p> <p>5 of the potential fits within the universe.</p> <p>6 Q. And was there a physical checklist, in</p> <p>7 other words, you actually were working on this</p> <p>8 on paper?</p> <p>9 A. Probably not. It was a business process</p> <p>10 we went through. Whether we scribbled notes</p> <p>11 down or not, I don't remember.</p> <p>12 Q. As a result of this analysis, you and</p> <p>13 Ray Brown concluded that Rocky Boy would be a</p> <p>14 good fit?</p> <p>15 MR. SCHEFF: Object to the</p> <p>16 form. You can answer the question.</p> <p>17 THE WITNESS: After going</p> <p>18 through our due diligence of what variables</p> <p>19 were important, we identified a couple of</p> <p>20 tribes, and Rocky Boy was one of them. The</p> <p>21 predominant reason was they already had a</p> <p>22 lending code, a lending ordinance, and were in</p> <p>23 the lending business.</p> <p>24 BY MR. ACKELSBURG:</p>	<p style="text-align: right;">Page 79</p> <p>1 for, that led you to make any inquiries about</p> <p>2 the lending experience that the Chippewa Cree</p> <p>3 had?</p> <p>4 A. No, not that I remember.</p> <p>5 Q. Okay. What do you remember about what</p> <p>6 Jason told you about the qualities that they</p> <p>7 were looking for? The qualities in the tribe</p> <p>8 that they were looking for.</p> <p>9 A. In my discussions with Jason, they were</p> <p>10 looking for much of the same thing and -- in</p> <p>11 somebody who was going to purchase their</p> <p>12 services was, you know, were they good at</p> <p>13 living up to contracts? Could they pay their</p> <p>14 bills? Do they have decent employment,</p> <p>15 education on the reservation? How bad was the</p> <p>16 unemployment rate? Were they in the lending</p> <p>17 business was really crucial to him. Did they</p> <p>18 already have a lending code, lending</p> <p>19 ordinance? Did they know the lending</p> <p>20 business? He was indifferent as to whether it</p> <p>21 was a bank or community bank, an online</p> <p>22 lending business. They just wanted to know if</p> <p>23 they were engaged in financial services.</p> <p>24 Q. Okay. So the nondisclosure agreement,</p>
<p style="text-align: right;">Page 78</p> <p>1 Q. When you say they're in the lending</p> <p>2 business, they were trying to set up a</p> <p>3 program, correct?</p> <p>4 A. I don't know what stages it was. I know</p> <p>5 that they had an approved lending code and</p> <p>6 lending ordinances and that they told us they</p> <p>7 were in the lending business.</p> <p>8 Q. Did you do any due diligence on the</p> <p>9 extent of their lending business?</p> <p>10 A. No, sir.</p> <p>11 Q. Why not?</p> <p>12 A. It wasn't important to us.</p> <p>13 Q. Why? Why wasn't that important?</p> <p>14 A. Because we had no idea whether -- what</p> <p>15 we were looking at anyway, even if we saw</p> <p>16 something that -- having to do with the</p> <p>17 business.</p> <p>18 Q. In your conversations with Think</p> <p>19 Finance, initially that was mainly Jason</p> <p>20 Harvison?</p> <p>21 A. My initial contact with Think Finance</p> <p>22 was Jason Harvison, correct.</p> <p>23 Q. Was there anything that Jason Harvison</p> <p>24 told you, in terms of what they were looking</p>	<p style="text-align: right;">Page 80</p> <p>1 you can see here, was signed on February 28th,</p> <p>2 2011. Okay? At least that's when it was</p> <p>3 signed. That's the date --</p> <p>4 A. Yes, sir.</p> <p>5 Q. Okay. You see that?</p> <p>6 A. Yes.</p> <p>7 Q. All right. So this -- let's look at</p> <p>8 some of the communications that occurred</p> <p>9 leading up to the NDA being signed. All</p> <p>10 right? Let's start with this. This you --</p> <p>11 MR. ACKELSBURG: What are we</p> <p>12 up to, three --</p> <p>13 THE COURT REPORTER: 338.</p> <p>14 - - -</p> <p>15 (Whereupon Exhibit P-338 was marked for</p> <p>16 identification.)</p> <p>17 - - -</p> <p>18 BY MR. ACKELSBURG:</p> <p>19 Q. You can see -- looking at the lower</p> <p>20 right-hand corner, we're looking at a document</p> <p>21 that your lawyers produced to us -- from your</p> <p>22 material. Do you see that?</p> <p>23 A. Yes, sir.</p> <p>24 Q. So that has a Haynes number. That means</p>

<p style="text-align: right;">Page 81</p> <p>1 it came out of -- it from you. Okay.</p> <p>2 A. Yes.</p> <p>3 Q. All right. I'll give you a chance to</p> <p>4 look at it, and then I'll have some questions.</p> <p>5 A. Okay.</p> <p>6 Q. Okay. All right. So it starts off,</p> <p>7 there's an e-mail from Jason Harvison to you,</p> <p>8 where he said: It was great talking to you</p> <p>9 yesterday and discussing the tribal</p> <p>10 opportunity. I look forward to meeting with</p> <p>11 you Tuesday.</p> <p>12 So I take it he's referring</p> <p>13 to the initial phone call that you had as a</p> <p>14 result of the contact with the lawyers at</p> <p>15 Pepper?</p> <p>16 A. I believe that to be correct.</p> <p>17 Q. Okay. So he's saying -- "talking to you</p> <p>18 yesterday," that would have been February</p> <p>19 17th, probably.</p> <p>20 MR. SCHEFF: Objection to</p> <p>21 form. You can answer the question.</p> <p>22 BY MR. ACKELSBURG:</p> <p>23 Q. And might that have been the same day</p> <p>24 that you were meeting with Tim and talking</p>	<p style="text-align: right;">Page 83</p> <p>1 in.</p> <p>2 Q. And you see at the top, there's an</p> <p>3 e-mail from Jason to you, February 23rd,</p> <p>4 "Great meeting with you yesterday." So it's</p> <p>5 probably that first meeting at your residence</p> <p>6 with you and Jason was probably more or less</p> <p>7 the 22nd of February?</p> <p>8 MR. SCHEFF: Object to the</p> <p>9 form. You can answer the question.</p> <p>10 THE WITNESS: That seems</p> <p>11 reasonable, yes.</p> <p>12 BY MR. ACKELSBURG:</p> <p>13 Q. Okay. And he copies Sarah Cutrona and</p> <p>14 Steve Shaper. Do you see that?</p> <p>15 A. Yes, sir.</p> <p>16 Q. And were they also involved in the</p> <p>17 discussions with you at some point?</p> <p>18 MR. SCHEFF: Object to the</p> <p>19 form.</p> <p>20 THE WITNESS: Sarah was</p> <p>21 involved in most of the discussions, if not</p> <p>22 all of them. Steve Shaper, I had, I think,</p> <p>23 maybe one phone call and four or five e-mails,</p> <p>24 and that was it.</p>
<p style="text-align: right;">Page 82</p> <p>1 with Mr. Eckman on the phone, or was there --</p> <p>2 in other words, was the call with Mr. Harvison</p> <p>3 the same day you were talking to Mr. Eckman?</p> <p>4 MR. SCHEFF: You can answer</p> <p>5 that question.</p> <p>6 THE WITNESS: I don't believe</p> <p>7 so. I believe it was -- I was contacted prior</p> <p>8 by Tim and then Rick and then set up a call</p> <p>9 within -- it could have been a week.</p> <p>10 BY MR. ACKELSBURG:</p> <p>11 Q. Okay. All right. So it's sometime in</p> <p>12 early February and probably was the initial</p> <p>13 conversation you had with Rick Eckman,</p> <p>14 sometime prior to February 18th?</p> <p>15 A. Prior to February 18th. I'm not sure if</p> <p>16 it was January or February.</p> <p>17 Q. Okay. All right. And it looks like,</p> <p>18 then, that Jason is making arrangements with</p> <p>19 you for a follow-up, in-person meeting, which</p> <p>20 sounds like is going to take place at your --</p> <p>21 at your house or your office or?</p> <p>22 A. It was -- I had an apartment in a high</p> <p>23 rise. It would have been at my home, but in</p> <p>24 meeting rooms in my -- in the building I lived</p>	<p style="text-align: right;">Page 84</p> <p>1 BY MR. ACKELSBURG:</p> <p>2 Q. Okay. And did you understand their</p> <p>3 different roles in the company?</p> <p>4 A. I understood Sarah to be their legal</p> <p>5 counsel and Steve to be one of their</p> <p>6 executives.</p> <p>7 Q. And what about Jason?</p> <p>8 A. Jason was also an executive.</p> <p>9 Q. Okay. But the meeting that occurred</p> <p>10 roughly around February 22nd was just you and</p> <p>11 Jason on a one-on-one?</p> <p>12 A. I believe my first meeting was just</p> <p>13 Jason and I, yes.</p> <p>14 Q. And do you remember him showing you,</p> <p>15 like, a PowerPoint about the proposal?</p> <p>16 A. I do.</p> <p>17 Q. Okay. Would he have it on a laptop and</p> <p>18 put it up on a screen, or how did you see</p> <p>19 that? Or was it in paper form?</p> <p>20 A. In my meeting one-on-one, it was just in</p> <p>21 paper form.</p> <p>22 Q. Okay. Let's look at another e-mail.</p> <p>23 This also came from you.</p> <p>24 MR. ACKELSBURG: This will be</p>

<p style="text-align: right;">Page 85</p> <p>1 339.</p> <p>2 THE WITNESS: Yes, sir.</p> <p>3 - - -</p> <p>4 (Whereupon Exhibit P-339 was marked for</p> <p>5 identification.)</p> <p>6 - - -</p> <p>7 BY MR. ACKELSBURG:</p> <p>8 Q. Okay. Ready to go?</p> <p>9 A. I -- yes.</p> <p>10 Q. Do you remember this e-mail?</p> <p>11 A. Yes, sir. I do.</p> <p>12 Q. Okay. So it starts -- at the bottom,</p> <p>13 there's an e-mail that was forwarded to you.</p> <p>14 It's an e-mail from Sarah Cutrona to Steve</p> <p>15 Shaper and Jason Harvison. Do you see that?</p> <p>16 A. At the beginning of 5 or 6, where does</p> <p>17 it start?</p> <p>18 Q. The initial e-mail is the last two pages</p> <p>19 there. That's how the e-mail trail starts.</p> <p>20 Okay?</p> <p>21 A. Okay.</p> <p>22 Q. So it looks like this was -- it started</p> <p>23 with an e-mail that you weren't -- you weren't</p> <p>24 part of that communication, but then the</p>	<p style="text-align: right;">Page 87</p> <p>1 Q. On the 28th. All right. So this is</p> <p>2 four days before the -- right. So you're</p> <p>3 still trying to investigate, each of you</p> <p>4 trying to figure out what this is about.</p> <p>5 MR. SCHEFF: Object to the</p> <p>6 form.</p> <p>7 BY MR. ACKELSBURG:</p> <p>8 Q. You haven't approached the tribe yet at</p> <p>9 this point?</p> <p>10 MR. SCHEFF: Object to the</p> <p>11 form. You can answer the question.</p> <p>12 THE WITNESS: I'm not sure.</p> <p>13 BY MR. ACKELSBURG:</p> <p>14 Q. Okay. Let's see what Shaper writes to</p> <p>15 you. He said: Steve, to start with, our</p> <p>16 general counsel would like to have the signed</p> <p>17 NDA and the documents shown below. Right?</p> <p>18 A. Yes, sir.</p> <p>19 Q. He tells you how to -- he gives you</p> <p>20 Sarah's e-mail, send it to her, and then he</p> <p>21 says that Sarah is trying to get one of the</p> <p>22 tribes up within a week and this has her</p> <p>23 highest priority. Do you see that?</p> <p>24 A. Yes.</p>
<p style="text-align: right;">Page 86</p> <p>1 e-mail was forwarded to you by someone else.</p> <p>2 Do you see that?</p> <p>3 A. Yes, sir.</p> <p>4 Q. Okay. So it starts with an e-mail from</p> <p>5 Sarah Cutrona to the others saying -- just</p> <p>6 referring to the documents that she needs. Do</p> <p>7 you see that? She needs the name of the</p> <p>8 tribe. She wants to verify that it's</p> <p>9 federally recognized. She wants to know if</p> <p>10 they already have a tribal lending entity and</p> <p>11 whether they have an actual lending law. Do</p> <p>12 you see that?</p> <p>13 A. Yes, sir.</p> <p>14 Q. And those are the things that you were</p> <p>15 talking about before?</p> <p>16 A. Yes.</p> <p>17 Q. And so that gets forwarded to you by</p> <p>18 Steve Shaper, and this is on February 24th.</p> <p>19 And that's the same date that the NDA was</p> <p>20 signed, the nondisclosure agreement, right?</p> <p>21 A. I believe that's correct.</p> <p>22 Q. Okay.</p> <p>23 A. The nondisclosure was signed on the</p> <p>24 28th.</p>	<p style="text-align: right;">Page 88</p> <p>1 Q. Okay. Now, was this part of what Jason</p> <p>2 talked to you about when he met you a few days</p> <p>3 earlier, that there was some rush involved?</p> <p>4 A. Jason told me that they would like to</p> <p>5 find a tribal partner as soon as it was</p> <p>6 physically possible.</p> <p>7 Q. Do you remember Jason explaining to you</p> <p>8 why they were in such a hurry?</p> <p>9 A. Yes. Jason told me that they had a</p> <p>10 portfolio that was winding down and they</p> <p>11 didn't want to lose those clients.</p> <p>12 Q. Now, you later learned that that</p> <p>13 portfolio had to do with a previous</p> <p>14 partnership between Think Finance and First</p> <p>15 Bank of Delaware, correct?</p> <p>16 A. I don't specifically remember who their</p> <p>17 partnership was with.</p> <p>18 Q. Okay. So -- and then Mr. Shaper says to</p> <p>19 you: As I explained before you got your call,</p> <p>20 Think Finance is losing a large amount of</p> <p>21 money each week by not being able to generate</p> <p>22 new loans. Do you see that?</p> <p>23 A. Yes.</p> <p>24 Q. Is that part of what Jason Harvison</p>

<p style="text-align: right;">Page 89</p> <p>1 explained to you a few days earlier, in your 2 meeting? 3 A. The general impression was that they 4 would like to get into business as soon as 5 possible, yes. 6 Q. But it was because they had this loan 7 portfolio where they can't offer new loans to 8 those customers? 9 MR. SCHEFF: Object to the 10 form. You can answer the question. 11 THE WITNESS: I -- 12 BY MR. ACKELSBURG: 13 Q. You don't remember? 14 A. I don't remember. 15 Q. Okay. The next sentence: Before our 16 meeting on Tuesday, we expected to have 17 everything signed with our Oklahoma tribe this 18 week and be processing new loans by Monday. 19 So let me ask you about that. 20 Is that something that either Jason Harvison 21 or Steve Shaper had previously explained to 22 you, that they were waiting on -- that they 23 had some other deal pending with the tribe in 24 Oklahoma? Do you remember that?</p>	<p style="text-align: right;">Page 91</p> <p>1 continuing to read in the e-mail from Mr. 2 Shaper to you -- "The significance of the 3 first tribe to go up is that our existing 4 websites will forward all inquiries to the 5 tribe's new website. Plus all existing loans, 6 when/if they extend, that tribe will take over 7 the new loan." Do you see that? 8 A. Yes, sir. I see that. 9 Q. And do you remember that as part of what 10 Jason and Steve Shaper explained to you as 11 part of the rush that they were in? 12 MR. SCHEFF: Object to the 13 form. 14 BY MR. ACKELSBURG: 15 Q. Why they were in such a hurry to get a 16 tribal partner? 17 MR. SCHEFF: Same objection. 18 THE WITNESS: Except for what 19 I'm reading now, the discussion was just 20 "Steven, we need to find a tribal partner as 21 fast as we can. Can you help us?" 22 BY MR. ACKELSBURG: 23 Q. Okay. In fact, in the next sentence, 24 they were talking about getting one of your</p>
<p style="text-align: right;">Page 90</p> <p>1 A. I was under the impression that that had 2 already been completed, and in the deck Jason 3 gave me was copies of the websites for that 4 business. 5 Q. That was called Great Plains Lending, 6 correct? 7 A. That's correct. 8 Q. Okay. And then it says -- then Shaper 9 says: This was easy to do since our websites 10 have been up and collecting applications all 11 along. 12 Do you know which websites 13 he's referring to there, whether it's Great 14 Plains Lending or the previous? 15 A. I don't -- I don't. 16 Q. But then you see he says this: We have 17 simply been turning down every applicant and 18 obviously want to stop doing that. 19 Does that refresh your 20 recollection that they were -- 21 A. I don't know what he was referring to. 22 Q. Okay. 23 A. I'm sorry. 24 Q. "The significance of the" -- I'm</p>	<p style="text-align: right;">Page 92</p> <p>1 tribes up in under a week, right? I mean, 2 really fast? 3 A. Yes, that's what it says. 4 Q. Okay. And also suggesting that this 5 tribe that you might be able to find, might 6 take the place of the Oklahoma tribe that they 7 were already talking to. Do you see that? 8 A. Yes, I see that. 9 Q. Is that what they explained to you? 10 A. Yes. They were hoping to get a tribe up 11 and running as fast as humanly possible. 12 Q. And maybe to take the place of the tribe 13 that they were already talking with? 14 MR. SCHEFF: Object to the 15 form. 16 THE WITNESS: I believe it 17 was just to get a tribe, regardless of who it 18 was, up as fast as they possibly could. 19 BY MR. ACKELSBURG: 20 Q. And then she says -- I'm sorry. 21 Mr. Shaper goes on, "A tremendous amount of 22 work has gone on, both legally getting 23 everything in order and designing a complete 24 website and all backup, applications,</p>

<p style="text-align: right;">Page 105</p> <p>1 don't know. Or maybe -- I --</p> <p>2 MR. SHAPIRO: It might have</p> <p>3 just been printed that day and not created at</p> <p>4 all but just printed out. You don't know?</p> <p>5 MR. ACKELSBURG: I just know</p> <p>6 what the metadata says. I have no idea, but</p> <p>7 the form in which it was produced to us in</p> <p>8 accordance with ESI protocol.</p> <p>9 MR. SHAPIRO: I just want to</p> <p>10 understand. When you said to the witness</p> <p>11 "this was created on that day," I don't want</p> <p>12 to --</p> <p>13 MR. ACKELSBURG: Okay.</p> <p>14 BY MR. ACKELSBURG:</p> <p>15 Q. This is what the metadata says. Do you</p> <p>16 know what metadata is?</p> <p>17 A. No, sir.</p> <p>18 Q. It's the codes that accompany the</p> <p>19 document in the electronic form when it's</p> <p>20 produced to us?</p> <p>21 MR. SCHEFF: Mr. Haynes, the</p> <p>22 metadata is irrelevant to you. You testify</p> <p>23 based on your best recollection --</p> <p>24 MR. ACKELSBURG: Yeah.</p>	<p style="text-align: right;">Page 107</p> <p>1 problem? All right, Richard. When I -- I</p> <p>2 sent a subpoena in February, and the night</p> <p>3 before the deposition, you send me a document</p> <p>4 and you're criticizing me for using a</p> <p>5 different copy of the document because I</p> <p>6 haven't had a chance to review the last-minute</p> <p>7 dump that you made last night?</p> <p>8 MR. SCHEFF: Mr. Ackelsberg,</p> <p>9 it wasn't a last-minute dump. It was in</p> <p>10 response to an inquiry that you raised by</p> <p>11 e-mail that we responded to but we were under</p> <p>12 no requirement to respond to because the</p> <p>13 subpoena requires the documents be produced on</p> <p>14 the date of the deposition, not previous. You</p> <p>15 don't have a right to that. We did that as a</p> <p>16 courtesy to you. You know what.</p> <p>17 So we gave you documents last</p> <p>18 night because you raised some questions, and</p> <p>19 we then did an additional search to determine</p> <p>20 whether there were documents responsive. But</p> <p>21 for some reason, they've not been collected.</p> <p>22 We determined that and produced them to you.</p> <p>23 So don't make statements like on the record.</p> <p>24 Ask your next question.</p>
<p style="text-align: right;">Page 106</p> <p>1 Right.</p> <p>2 MR. SCHEFF: -- about the</p> <p>3 truth.</p> <p>4 Mr. Ackelsberg, we produced</p> <p>5 the deck that Mr. Haynes reviewed. So I don't</p> <p>6 know why you're showing him this. We produced</p> <p>7 it as part of Mr. Haynes' document.</p> <p>8 MR. ACKELSBURG: We didn't</p> <p>9 get it.</p> <p>10 MR. SCHEFF: You did.</p> <p>11 MR. ACKELSBURG: No, we</p> <p>12 didn't.</p> <p>13 MR. SCHEFF: I don't have the</p> <p>14 Bates number.</p> <p>15 MR. ACKELSBURG: Give me the</p> <p>16 Bates number.</p> <p>17 MR. SCHEFF: It's in the</p> <p>18 documents that you received yesterday.</p> <p>19 MR. ACKELSBURG: Yesterday?</p> <p>20 Oh, the one last night that you sent that I</p> <p>21 haven't had a chance to look at yet?</p> <p>22 MR. SCHEFF: Well, that's</p> <p>23 your problem.</p> <p>24 MR. ACKELSBURG: That's my</p>	<p style="text-align: right;">Page 108</p> <p>1 BY MR. ACKELSBURG:</p> <p>2 Q. Did you have a chance to look at P-122?</p> <p>3 A. Yes, I have.</p> <p>4 Q. Okay. And does this look familiar to</p> <p>5 you?</p> <p>6 A. It looks familiar to me, yes.</p> <p>7 Q. Okay. So, for example, when Mr. Shaper</p> <p>8 in the previous e-mail talked about a</p> <p>9 portfolio size of 25 million as shown on</p> <p>10 page 3 of the presentation, if you look at</p> <p>11 page 3, that's what he is referring to; am I</p> <p>12 right?</p> <p>13 MR. SCHEFF: Object to the</p> <p>14 form. You can answer the question if you can.</p> <p>15 THE WITNESS: I'm not --</p> <p>16 there's a 25-million-dollar line with a</p> <p>17 projected tribal profit on page 3.</p> <p>18 BY MR. ACKELSBURG:</p> <p>19 Q. This looks familiar to you as the</p> <p>20 presentation that he gave to you, right?</p> <p>21 MR. SCHEFF: Object to the</p> <p>22 form. That wasn't your question. Your</p> <p>23 question was whether Mr. Shaper was referring</p> <p>24 to this page in his e-mail, and how he could</p>

<p style="text-align: right;">Page 109</p> <p>1 he know that? But answer the question if you</p> <p>2 can.</p> <p>3 THE WITNESS: I'm not sure</p> <p>4 what he's -- I can infer but I'm not sure what</p> <p>5 he was referring to.</p> <p>6 BY MR. ACKELSBURG:</p> <p>7 Q. All right. Okay. And so you can infer.</p> <p>8 Let's just start -- the deck that you're</p> <p>9 looking at looks like the deck that Jason gave</p> <p>10 you, right?</p> <p>11 A. Yes, sir.</p> <p>12 Q. And on page 3, there are projections,</p> <p>13 right? Including projections for a</p> <p>14 25-million-dollar portfolio, correct?</p> <p>15 A. That's correct.</p> <p>16 Q. Okay. Now, let's start with page 2.</p> <p>17 A. Yes, sir.</p> <p>18 Q. Does page 2 look familiar to you as</p> <p>19 what -- as part of what Jason presented to</p> <p>20 you? You're on page 3. Look at page 2.</p> <p>21 MR. SCHEFF: Look at whatever</p> <p>22 page you want to look at to familiarize</p> <p>23 yourself with the document and then you can</p> <p>24 answer Mr. Ackelsberg's question.</p>	<p style="text-align: right;">Page 111</p> <p>1 form.</p> <p>2 THE WITNESS: I remember the</p> <p>3 discussion of what the tribe -- what the cost</p> <p>4 to the tribes would be and what was -- could</p> <p>5 be provided to the tribe.</p> <p>6 BY MR. ACKELSBURG:</p> <p>7 Q. And you remember that the representation</p> <p>8 that Jason gave to you was that the tribe did</p> <p>9 not have to invest any of their own money?</p> <p>10 MR. SCHEFF: Object to the</p> <p>11 form. You can answer the question.</p> <p>12 BY MR. ACKELSBURG:</p> <p>13 Q. That was part of what made it appealing</p> <p>14 to the tribe; am I right?</p> <p>15 MR. SCHEFF: Object to the</p> <p>16 form. You can answer the question.</p> <p>17 THE WITNESS: Tribes find</p> <p>18 those offers very attractive because many</p> <p>19 tribes don't have the money to invest.</p> <p>20 BY MR. ACKELSBURG:</p> <p>21 Q. Okay. And Rocky Boy Chippewa Cree did</p> <p>22 not have any money to invest at the time; is</p> <p>23 that right?</p> <p>24 MR. SCHEFF: Object to the</p>
<p style="text-align: right;">Page 110</p> <p>1 MR. ACKELSBURG: We're</p> <p>2 actually looking at page 2, but --</p> <p>3 MR. SCHEFF: Look at however</p> <p>4 much of the document you choose to, and then</p> <p>5 you can answer Mr. Ackelsberg's question.</p> <p>6 THE WITNESS: Yes, sir.</p> <p>7 BY MR. ACKELSBURG:</p> <p>8 Q. All right. Then look at the middle</p> <p>9 paragraph, the middle line. "Think Finance</p> <p>10 has the unique turnkey solution for helping</p> <p>11 tribes enter this lucrative market." Do you</p> <p>12 remember that line there?</p> <p>13 A. I can read it here. I see it.</p> <p>14 Q. Do you remember it, when you were</p> <p>15 talking with Mr. Harvison?</p> <p>16 A. Not particularly.</p> <p>17 Q. What about the last item on page 3?</p> <p>18 "Using Think Finance technology and services,</p> <p>19 tribes can generate millions of dollars in</p> <p>20 cash flow with no investments in technology,</p> <p>21 lending capital or marketing costs and with no</p> <p>22 risk of loss." You remember that, though,</p> <p>23 right?</p> <p>24 MR. SCHEFF: Object to the</p>	<p style="text-align: right;">Page 112</p> <p>1 form.</p> <p>2 THE WITNESS: At the time,</p> <p>3 Rocky Boy was not in a position to make any</p> <p>4 investments in any of their businesses, as far</p> <p>5 as I know.</p> <p>6 MR. ACKELSBURG: I'm told by</p> <p>7 the video recorder that we need to take a</p> <p>8 short break so he can replace the tape.</p> <p>9 VIDEOTAPE OPERATOR: That</p> <p>10 concludes DVD number one. 10:40, off the</p> <p>11 record.</p> <p>12 This begins DVD number two.</p> <p>13 The time is 10:52. We are on the record.</p> <p>14 BY MR. ACKELSBURG:</p> <p>15 Q. Mr. Haynes, we'll go back to the</p> <p>16 PowerPoint later.</p> <p>17 After the nondisclosure</p> <p>18 agreement was signed, did you conduct any</p> <p>19 further investigation or review of what Think</p> <p>20 Finance was proposing to do for the tribe? In</p> <p>21 other words, did you do any due diligence</p> <p>22 about Think Finance on behalf of the tribe?</p> <p>23 MR. SCHEFF: Object to the</p> <p>24 form.</p>

<p style="text-align: right;">Page 113</p> <p>1 THE WITNESS: No, sir, I did</p> <p>2 not.</p> <p>3 BY MR. ACKELSBURG:</p> <p>4 Q. And you weren't doing any due diligence</p> <p>5 for Think Finance about the tribe, were you?</p> <p>6 A. No. I would help facilitate passing of</p> <p>7 documents back and forth between the parties.</p> <p>8 Q. Okay. Did you know anything about the</p> <p>9 tribe's existing plans to conduct an online</p> <p>10 lending business through a tribal company</p> <p>11 named First American Capital Resources?</p> <p>12 A. No sir, I did not.</p> <p>13 Q. Did you during the discussions between</p> <p>14 Think Finance and Plain Green come to learn</p> <p>15 about a company called Encore Services?</p> <p>16 A. During the negotiations for the</p> <p>17 transaction, I came to know of a company</p> <p>18 called Encore, yes.</p> <p>19 Q. What was the context of you coming to</p> <p>20 know that?</p> <p>21 A. There was a disclosure by the attorney</p> <p>22 and maybe from Billi Anne Morsette that they</p> <p>23 had a problem going forward with the proposed</p> <p>24 Think transaction because they already had a</p>	<p style="text-align: right;">Page 115</p> <p>1 I had met him once before.</p> <p>2 Q. And you don't know whether FACR or any</p> <p>3 other lender affiliated with Chippewa Cree had</p> <p>4 ever actually launched a lending website?</p> <p>5 MR. SCHEFF: Object to the</p> <p>6 form. You haven't used the term FACR before.</p> <p>7 MR. ACKELSBURG: First</p> <p>8 American Capital Resources.</p> <p>9 MR. SCHEFF: Thank you.</p> <p>10 THE WITNESS: I was not aware</p> <p>11 of how those businesses were operating --</p> <p>12 whether they were operating or not or how</p> <p>13 profitable they were.</p> <p>14 BY MR. ACKELSBURG:</p> <p>15 Q. And I asked you this question when we</p> <p>16 were talking before the NDA was signed, but</p> <p>17 I'll ask you the same question. Now that the</p> <p>18 NDA is signed, so it's after February 28th,</p> <p>19 did Think Finance inquire as to anything about</p> <p>20 the Chippewa Cree's existing lending business</p> <p>21 or experience?</p> <p>22 MR. SCHEFF: Object to the</p> <p>23 form. You can answer if you can.</p> <p>24 THE WITNESS: They made no</p>
<p style="text-align: right;">Page 114</p> <p>1 partner and that they needed to waiver in</p> <p>2 order to do the transaction.</p> <p>3 Q. An exclusivity waiver?</p> <p>4 A. I'm not sure what it was.</p> <p>5 Q. Okay. So you mentioned Billi Anne</p> <p>6 Morsette. Was she the main person you were</p> <p>7 interacting with on the tribal side?</p> <p>8 A. On the tribal side, I had three</p> <p>9 contacts. Robin Kovash was our attorney,</p> <p>10 Billi Anne Morsette and Neal Rosette.</p> <p>11 Q. Okay. And had you had any prior</p> <p>12 business relations with either Billi Anne</p> <p>13 Morsette or Neal Rosette?</p> <p>14 MR. SCHEFF: Object to the</p> <p>15 form. You can answer the question.</p> <p>16 THE WITNESS: I had not met</p> <p>17 Billi Anne before. I believe I had met Neal</p> <p>18 once before, but I don't remember doing</p> <p>19 business with him.</p> <p>20 BY MR. ACKELSBURG:</p> <p>21 Q. That was with regard to the slot</p> <p>22 machines?</p> <p>23 A. I'm not sure what business it was</p> <p>24 between the hotel, oil and gas, and the slots.</p>	<p style="text-align: right;">Page 116</p> <p>1 request of me, but they had attorneys. Once</p> <p>2 the NDA was signed, the attorneys jumped in</p> <p>3 and my role became smaller and smaller and</p> <p>4 smaller over time.</p> <p>5 BY MR. ACKELSBURG:</p> <p>6 Q. At some point, Rick Eckman got involved,</p> <p>7 right?</p> <p>8 A. Yes, sir.</p> <p>9 Q. Okay. Now, when did he first get</p> <p>10 involved?</p> <p>11 MR. SCHEFF: Object to the</p> <p>12 form. You can answer the question.</p> <p>13 THE WITNESS: I had met Rick</p> <p>14 prior or talked to him on the phone with Tim</p> <p>15 Anderson prior to my first meeting with Jason.</p> <p>16 BY MR. ACKELSBURG:</p> <p>17 Q. Right. We --</p> <p>18 A. He popped up again probably right after</p> <p>19 the NDA was signed when -- yeah. That's about</p> <p>20 the right time.</p> <p>21 Q. Again, give us some context. How did he</p> <p>22 pop up?</p> <p>23 A. You know, he just popped up. So Tim</p> <p>24 Anderson is my attorney. I'd never met Rick</p>

<p style="text-align: right;">Page 117</p> <p>1 before and during our conversation, we just --</p> <p>2 we had agreed, Rick and Tim and I --</p> <p>3 MR. SCHEFF: Mr. Haynes,</p> <p>4 don't reveal attorney-client privileged</p> <p>5 conversations with Mr. Anderson.</p> <p>6 BY MR. ACKELSBURG:</p> <p>7 Q. At this point, there's been no testimony</p> <p>8 about legal advice. We're just talking about</p> <p>9 setting up, you know, so --</p> <p>10 MR. SCHEFF: Then I'm going</p> <p>11 to talk with my client because I don't know</p> <p>12 what he's about to say and he's just testified</p> <p>13 that Mr. Anderson is his lawyer.</p> <p>14 MR. ACKELSBURG: Let me make</p> <p>15 it clear to the witness.</p> <p>16 BY MR. ACKELSBURG:</p> <p>17 Q. I'm not asking you about any legal</p> <p>18 advice that you got from Tim Anderson.</p> <p>19 MR. SCHEFF: Let's talk about</p> <p>20 it anyway. What he understands legal advice</p> <p>21 to be and what legal advice might be are two</p> <p>22 different things. All right? So let's talk</p> <p>23 outside.</p> <p>24 VIDEOTAPE OPERATOR: 10:58,</p>	<p style="text-align: right;">Page 119</p> <p>1 form. You can answer if you can.</p> <p>2 BY MR. ACKELSBURG:</p> <p>3 Q. This is a call you had just one-on-one,</p> <p>4 you and Eckman?</p> <p>5 A. No. Tim Anderson was on the phone.</p> <p>6 Q. I see. Okay. So he was to be inserted</p> <p>7 into the -- in what capacity would he be</p> <p>8 inserted into the deal?</p> <p>9 A. To facilitate or to help the tribe with</p> <p>10 the transactional documents.</p> <p>11 Q. I'm confused. So when you first met</p> <p>12 Mr. Eckman on the phone, it was in the context</p> <p>13 of Think Finance looking for a tribal partner,</p> <p>14 right?</p> <p>15 MR. SCHEFF: Object to the</p> <p>16 form, you can answer the question.</p> <p>17 THE WITNESS: It was an</p> <p>18 introduction to Think Finance, yes.</p> <p>19 BY MR. ACKELSBURG:</p> <p>20 Q. Okay. Was it your understanding at that</p> <p>21 time that Mr. Eckman was representing Think</p> <p>22 Finance? Was that your understanding?</p> <p>23 A. I don't remember ever having been told</p> <p>24 he represented them, but he clearly was -- put</p>
<p style="text-align: right;">Page 118</p> <p>1 off the record.</p> <p>2 10:59, back on the record.</p> <p>3 BY MR. ACKELSBURG:</p> <p>4 Q. So what can you tell us about Mr. Eckman</p> <p>5 popping up?</p> <p>6 MR. SCHEFF: Again, just with</p> <p>7 the admonition not to reveal attorney-client</p> <p>8 privileged communications that you may have</p> <p>9 had with Mr. Anderson. You can answer the</p> <p>10 question.</p> <p>11 THE WITNESS: During our</p> <p>12 conversations while the LOI was being put</p> <p>13 together, there was -- Eckman suggested that</p> <p>14 Tim Anderson be inserted to help with the</p> <p>15 transitional documents. And then shortly</p> <p>16 thereafter he appeared --</p> <p>17 BY MR. ACKELSBURG:</p> <p>18 Q. Let's just stop there. Eckman suggested</p> <p>19 that to you or to --</p> <p>20 A. To be put into the LOI with the tribe,</p> <p>21 that's correct. My LOI with the tribe.</p> <p>22 Q. Did Eckman explain to you why he wanted</p> <p>23 Tim Anderson inserted into the deal?</p> <p>24 MR. SCHEFF: Object to the</p>	<p style="text-align: right;">Page 120</p> <p>1 me in touch with them. I didn't ask them if</p> <p>2 he represented them or not.</p> <p>3 Q. So Mr. Eckman puts you in touch with</p> <p>4 Think Finance as a lender that's looking for a</p> <p>5 tribe to partner with, right?</p> <p>6 MR. SCHEFF: Object to the</p> <p>7 form; mischaracterizes the testimony. You can</p> <p>8 answer the question.</p> <p>9 BY MR. ACKELSBURG:</p> <p>10 Q. I'm trying to get the sequence here.</p> <p>11 That's --</p> <p>12 MR. SCHEFF: That's fine.</p> <p>13 You can get the sequence. Just don't</p> <p>14 mischaracterize the testimony. You can answer</p> <p>15 the question.</p> <p>16 THE WITNESS: Tim Anderson,</p> <p>17 my attorney who I'd done Indian deals with</p> <p>18 before, introduced me to one of his partners</p> <p>19 who was going to put me in touch with a</p> <p>20 business opportunity which turned out to be</p> <p>21 Think Finance.</p> <p>22 BY MR. ACKELSBURG:</p> <p>23 Q. Okay. And then the NDA is signed,</p> <p>24 discussions are going on, and Eckman pops up</p>

<p style="text-align: right;">Page 121</p> <p>1 and says that Tim Anderson should be inserted 2 into the deal, right? 3 MR. SCHEFF: Objection to the 4 form; asked and answered. You can testify 5 again. 6 THE WITNESS: It was 7 requested that Tim Anderson be loaded in as a 8 transactional attorney on the transaction. 9 BY MR. ACKELSBURG: 10 Q. But at this point, Tim Anderson is your 11 lawyer, right? 12 A. Tim Anderson is my lawyer, correct. 13 Q. Okay. So was your idea at that point 14 that he -- that Tim Anderson would be looking 15 out for your interest with regard to your role 16 in the Plain Green proposal? 17 A. I always expected Tim Anderson to look 18 after my interest in the transactions that I 19 was doing. 20 Q. Okay. Good. This is also -- I'm going 21 to show you an exhibit that was -- that has 22 appeared before in this case. It already has 23 an identification as P-279. 24 A. Yes, sir.</p>	<p style="text-align: right;">Page 123</p> <p>1 identified as 340. 2 - - - 3 (Whereupon Exhibit P-340 was marked for 4 identification.) 5 - - - 6 THE WITNESS: Yes, sir. 7 BY MR. ACKELSBURG: 8 Q. So let me ask you something. So after 9 Mr. Eckman, as you say, popped up and said 10 that he wanted Mr. Anderson in the 11 transaction, was it your understanding that 12 Eckman was going to be in charge of the 13 documentation for the deal? 14 A. There was no understanding. He just 15 took charge. He took the reins and started 16 generating documents and being the negotiator 17 between all the parties. 18 Q. Okay. And we're looking at -- P-340 is 19 his initial draft of what became the eventual 20 term sheet; am I right? 21 MR. SCHEFF: Object to the 22 form. Answer the question if you can. 23 THE WITNESS: This is -- yes. 24 This is a draft of the term sheet, and there</p>
<p style="text-align: right;">Page 122</p> <p>1 Q. Okay. So this is the signed term sheet 2 for the deal that we're talking about; am I 3 right? 4 MR. SCHEFF: Object to the 5 form. You can answer the question. 6 THE WITNESS: Yes, this 7 appears to be the signed term sheet. 8 BY MR. ACKELSBURG: 9 Q. And that's your signature on the fourth 10 page of the document? 11 A. Yes, sir. That's my signature. 12 Q. Okay. Almost as bad as mine. 13 A. As bad as it is, that's my signature. 14 Q. All right. So this is dated March 11th, 15 so basically 11 days after the nondisclosure. 16 So the nondisclosure was February 28th. 17 A. Yes, sir. 18 Q. We're now in March 11th, right? 19 A. Yes, sir. 20 Q. Okay. So we'll be referring back to 21 that, but I want to look at some of the 22 earlier iterations of the term sheet, if I 23 can. 24 MR. ACKELSBURG: This will be</p>	<p style="text-align: right;">Page 124</p> <p>1 are material differences between this and the 2 final transaction. 3 BY MR. ACKELSBURG: 4 Q. No, I understand that, but this is -- I 5 just want to be clear. This is Eckman's 6 draft, the initial draft that started the 7 discussions that ultimately produced the final 8 term sheet? 9 MR. SCHEFF: Object to the 10 form. You can answer the question if you can. 11 THE WITNESS: There were 12 multiple iterations. I'm not sure if this was 13 the first one or not. But yes, this was a 14 draft of what turned out to be the final term 15 sheet. 16 BY MR. ACKELSBURG: 17 Q. Okay. And you see that this was an 18 e-mail sent by Rick to Sarah Cutrona, you, and 19 Tim Anderson, right? 20 A. Yes, sir. 21 Q. On March 3rd of 2011? 22 A. Correct. 23 Q. Okay. So at this point, the name of the 24 tribal entity -- and if you want to compare to</p>

<p style="text-align: right;">Page 125</p> <p>1 this to the final one, that's fine. If you 2 need to refer to it, you can refer to it. But 3 the final one, back to P-279, makes it clear 4 on page 3 that the tribe is going to establish 5 an entity called Plain Green LLC, right? 6 A. Yes, sir. Number 1 is the -- on page 3 7 says it will establish Plain Green, LLC. 8 Q. Okay. So as of March 11th, it was 9 understood that the name of the company would 10 be called Plain Green, the tribal-affiliated 11 company, right? 12 A. That's what LOI says. 13 Q. Well, and that's -- I'm also -- you 14 remember that, right? 15 A. Yes. 16 Q. Okay. But on March the 3rd, eight days 17 earlier when Eckman first floats this draft of 18 the term sheet, there's no reference to 19 anything called Plain Green; am I right? 20 MR. SCHEFF: Object to the 21 form. You can answer the question. The 22 document speaks for itself. 23 THE WITNESS: I don't see a 24 reference to Plain Green in this document.</p>	<p style="text-align: right;">Page 127</p> <p>1 a VPC entity, right? 2 MR. SCHEFF: Object to the 3 form. 4 THE WITNESS: That's what's 5 on here, yes. 6 BY MR. ACKELSBURG: 7 Q. Now, was this -- when you got this from 8 Eckman, was this the first time you heard 9 about VPC or was VPC -- and by VPC, I mean 10 Victory Park. Did Mr. Harvison or someone 11 else from Think Finance introduce you to the 12 role that Victory Park would be playing? 13 MR. SCHEFF: Mr. Ackelsberg, 14 when you say "this" are you referring to 15 Exhibit-340? I just want to make sure the 16 record's clear on what you're referring to. 17 MR. ACKELSBURG: Yeah. Yeah. 18 Thank you. 19 MR. SCHEFF: That's all. I 20 just want to make sure the record's clear. 21 THE WITNESS: I don't -- 22 MR. SCHEFF: You can answer 23 the question if you can. 24 THE WITNESS: I don't</p>
<p style="text-align: right;">Page 126</p> <p>1 BY MR. ACKELSBURG: 2 Q. Well, in fact, you remember from your 3 conversations with Mr. Harvison that the name 4 was probably going to be Great Plains Lending, 5 right? 6 MR. SCHEFF: Object to the 7 form. You can answer the question if you can. 8 THE WITNESS: My conversation 9 with Harvison was that Great Plains Lending 10 already existed with the Oklahoma tribe. I 11 don't know what they were going to call this 12 one. 13 BY MR. ACKELSBURG: 14 Q. Okay. And ultimately the funding 15 mechanism was something called GPLS, right? 16 MR. SCHEFF: Object to the 17 form. 18 BY MR. ACKELSBURG: 19 Q. I mean, you can look -- 20 A. Ultimately, I believe GPLS was a 21 participant in the transaction, in the loans. 22 Q. Right. But at this point, all that 23 Eckman -- Eckman just put on the agreement 24 was -- on his draft was that it would just be</p>	<p style="text-align: right;">Page 128</p> <p>1 remember when I knew that Victory Park was 2 going to be participating. This may have been 3 the first one. I don't know. 4 BY MR. ACKELSBURG: 5 Q. Okay. And then it says it at the 6 bottom, the last provision is that Pepper 7 Hamilton shall be counsel to the tribe. Do 8 you see that? 9 A. I see that. 10 Q. Well, when you saw it back on March -- 11 did you notice it back on March 3rd, that your 12 lawyer was going to be counsel to the tribe? 13 MR. SCHEFF: Object to the 14 form. That's not been his testimony. You can 15 answer the question if you can. 16 THE WITNESS: I understood in 17 the LOI that Tim Anderson would be 18 representing -- not representing but reviewing 19 the transactional documents. This was 20 probably the first time that I saw that Pepper 21 Hamilton was going to be counsel to the tribe. 22 BY MR. ACKELSBURG: 23 Q. Do you remember being surprised by that? 24 A. Surprised? Possibly. They already had</p>

<p style="text-align: right;">Page 149</p> <p>1 Q. First time?</p> <p>2 A. First time I'd seen him.</p> <p>3 Q. Okay. And then above it in a reply</p> <p>4 e-mail from Ken Rees, he says "initial</p> <p>5 comments from Samir at VPC." Did you know who</p> <p>6 Samir was?</p> <p>7 A. No, sir. I didn't.</p> <p>8 Q. You'd heard the name Samir Patel? Does</p> <p>9 that sound familiar at all?</p> <p>10 A. I -- no. No.</p> <p>11 Q. Okay? So this was the first time</p> <p>12 that -- so this was the first time, March 9th,</p> <p>13 that you knew about -- you had any names to</p> <p>14 connect to VPC or their lawyers at Katten?</p> <p>15 A. Katten for sure, yes. This was the</p> <p>16 first time I would have seen most of these</p> <p>17 people.</p> <p>18 - - -</p> <p>19 (Whereupon Exhibit P-347 was marked for</p> <p>20 identification.)</p> <p>21 - - -</p> <p>22 THE WITNESS: Yes, sir.</p> <p>23 BY MR. ACKELSBURG:</p> <p>24 Q. So this is an e-mail that you got from</p>	<p style="text-align: right;">Page 151</p> <p>1 BY MR. ACKELSBURG:</p> <p>2 Q. But at some point -- the ultimate deal</p> <p>3 was that whatever money you lent to the tribe,</p> <p>4 you would get the same amount back from Think</p> <p>5 Finance, right?</p> <p>6 MR. SCHEFF: Object to the</p> <p>7 form. You can answer the question.</p> <p>8 BY MR. ACKELSBURG:</p> <p>9 Q. That was ultimately the deal that you</p> <p>10 worked out, right?</p> <p>11 MR. SCHEFF: Object to the</p> <p>12 form. You can answer the question if you can.</p> <p>13 THE WITNESS: The deal that I</p> <p>14 worked out was that I was going to lend money</p> <p>15 to the tribe, and I received a finder's fee</p> <p>16 for it and that was it. I had a network of</p> <p>17 high-net-worth individuals, and I was able to</p> <p>18 raise money.</p> <p>19 BY MR. ACKELSBURG:</p> <p>20 Q. At this point in time, you thought it</p> <p>21 was going to be your own money that you raised</p> <p>22 that was going to be the tribe's 1 percent?</p> <p>23 MR. SCHEFF: Object to the</p> <p>24 form. You can answer the question if you can.</p>
<p style="text-align: right;">Page 150</p> <p>1 Ken Rees describing what he calls the flow of</p> <p>2 funds for Plain Green, correct?</p> <p>3 A. That's what it says, yes.</p> <p>4 Q. Do you remember receiving this?</p> <p>5 A. I recognize it. Yes, I remember the</p> <p>6 document.</p> <p>7 Q. Now, if you look at the first number --</p> <p>8 paragraph number 1, it says "Haynes</p> <p>9 Investments will deposit \$1 million into the</p> <p>10 bank account that Plain Green has at First</p> <p>11 Bank of Delaware, and this amount is</p> <p>12 anticipated to cover two days of loan</p> <p>13 originations as well as the 1 percent</p> <p>14 ownership Plain Green will retain."</p> <p>15 So was it your understanding</p> <p>16 that you were going to be fronting a</p> <p>17 million -- a million dollars of your money?</p> <p>18 MR. SCHEFF: Object to the</p> <p>19 form. You can answer the question.</p> <p>20 THE WITNESS: As part of</p> <p>21 my -- the finder's fee and the financing</p> <p>22 agreement that I had, I was aware that I would</p> <p>23 be loaning money to the tribe to be able to</p> <p>24 make originations, yes.</p>	<p style="text-align: right;">Page 152</p> <p>1 THE WITNESS: I had worked</p> <p>2 hard to be able to identify sources of funds</p> <p>3 to be invested in this portfolio.</p> <p>4 BY MR. ACKELSBURG:</p> <p>5 Q. Okay. And that was your expectation,</p> <p>6 that you would be lending the money and</p> <p>7 earning interest on that money in a direct</p> <p>8 transaction between you or your entity and the</p> <p>9 tribe?</p> <p>10 MR. SCHEFF: Object to the</p> <p>11 form. You can answer the question.</p> <p>12 THE WITNESS: My expectation</p> <p>13 was that I was to raise money to provide</p> <p>14 financing for the origination of the loans.</p> <p>15 BY MR. ACKELSBURG:</p> <p>16 Q. When did -- but ultimately what -- the</p> <p>17 way it worked was that Think Finance ended up</p> <p>18 giving you that money instead of you having to</p> <p>19 raise the money, right?</p> <p>20 MR. SCHEFF: Object to the</p> <p>21 form.</p> <p>22 THE WITNESS: Ultimately,</p> <p>23 I borrowed the money from Think Finance</p> <p>24 instead of my other sources, and I -- so</p>

<p style="text-align: right;">Page 153</p> <p>1 that's correct.</p> <p>2 BY MR. ACKELSBURG:</p> <p>3 Q. Well, why -- what happened? Why -- what</p> <p>4 happened to the money that you worked hard</p> <p>5 raising that you had to go to Think Finance</p> <p>6 for a loan?</p> <p>7 MR. SCHEFF: Object to the</p> <p>8 form. Mischaracterizes the testimony.</p> <p>9 THE WITNESS: Yeah. I didn't</p> <p>10 have to go to Think Finance for the loan. I</p> <p>11 had raised the money, and I'm not exactly sure</p> <p>12 when it was decided that Think's investment</p> <p>13 would be used as opposed to the money I</p> <p>14 raised. I do remember there being some</p> <p>15 concern that my money was at 15 percent and</p> <p>16 that -- it was at a high interest rate. But</p> <p>17 my investors believed that was commensurate</p> <p>18 with the risk that they were taking.</p> <p>19 Eventually the transaction</p> <p>20 was that I borrowed the money from Think</p> <p>21 Finance at 5 percent. It was a better deal</p> <p>22 for the tribe. It made no difference to me</p> <p>23 because the spread that I was to make on these</p> <p>24 investments was zero. I was -- my investors</p>	<p style="text-align: right;">Page 155</p> <p>1 and all of the various people who were</p> <p>2 involved in the transaction?</p> <p>3 MR. SCHEFF: Object to the</p> <p>4 form --</p> <p>5 THE WITNESS: I'm not sure --</p> <p>6 MR. SCHEFF: -- lack of</p> <p>7 foundation.</p> <p>8 THE WITNESS: I'm not sure</p> <p>9 who prepared it, but it looks like the people</p> <p>10 that were involved in the transaction.</p> <p>11 BY MR. ACKELSBURG:</p> <p>12 Q. Okay. And so first we have the Think</p> <p>13 Finance people, the principals and the lawyers</p> <p>14 involved. And you see Paul Tauber here, as</p> <p>15 you guessed before, was listed under Think</p> <p>16 Finance. Do you see that?</p> <p>17 A. Yes, sir. I see his name there.</p> <p>18 Q. Okay. And then there's the Chippewa</p> <p>19 Cree. No lawyers listed there.</p> <p>20 MR. SCHEFF: Object to the</p> <p>21 form. Misstates the document.</p> <p>22 BY MR. ACKELSBURG:</p> <p>23 Q. I'm sorry, Leann Montes. Leann Montes,</p> <p>24 she's the tribal -- she the lawyer who's a</p>
<p style="text-align: right;">Page 154</p> <p>1 invest. I pay my investors. My fee came out</p> <p>2 of the 1 percent.</p> <p>3 BY MR. ACKELSBURG:</p> <p>4 Q. Now, ultimately, the term sheet, the</p> <p>5 final term sheet that we were looking at</p> <p>6 before -- yeah.</p> <p>7 A. 279.</p> <p>8 Q. P-279 -- that ultimately was signed by</p> <p>9 everybody March 11th. How did that signing</p> <p>10 occur? Was there an in-person meeting, or was</p> <p>11 this all just by e-mail or fax or something</p> <p>12 like that?</p> <p>13 A. I was not there. I signed and either</p> <p>14 scanned or e-mailed it back in. I don't</p> <p>15 remember what the rest was. I don't remember.</p> <p>16 MR. ACKELSBURG: 348.</p> <p>17 - - -</p> <p>18 (Whereupon Exhibit P-348 was marked for</p> <p>19 identification.)</p> <p>20 - - -</p> <p>21 THE WITNESS: Yes, sir.</p> <p>22 BY MR. ACKELSBURG:</p> <p>23 Q. So this is a list; am I right? This is</p> <p>24 a list that was prepared by Pepper Hamilton</p>	<p style="text-align: right;">Page 156</p> <p>1 member of the tribe. I think she's called the</p> <p>2 attorney general or something like that.</p> <p>3 A. I don't remember.</p> <p>4 Q. You don't remember. Okay.</p> <p>5 And then there's you, Haynes</p> <p>6 Investments. There is GPL Servicing. Do you</p> <p>7 see that? And the various people involved</p> <p>8 there?</p> <p>9 A. Yes, sir. I see that.</p> <p>10 Q. And at that point you -- then there's</p> <p>11 Katten Muchin. At that point you already were</p> <p>12 aware that Katten was counsel to Victory Park,</p> <p>13 right?</p> <p>14 MR. SCHEFF: Object to the</p> <p>15 form. There's no date on this document.</p> <p>16 THE WITNESS: I'm not sure</p> <p>17 when.</p> <p>18 BY MR. ACKELSBURG:</p> <p>19 Q. Okay. Conner and Winters, John</p> <p>20 Williams. Do you remember that name?</p> <p>21 A. I do not remember that name.</p> <p>22 Q. Okay. Then there's Robin Kovash, right?</p> <p>23 A. Yes, sir. I see his name.</p> <p>24 Q. And we were talking about him before.</p>

<p style="text-align: right;">Page 157</p> <p>1 And then there's Pepper Hamilton with Eckman, 2 Anderson, Wakiyama and Rees, right? 3 A. Yes, sir. All listed under Pepper 4 Hamilton. 5 Q. All right. And on this list, Pepper 6 Hamilton was the firm that was representing 7 you; am I right? 8 MR. SCHEFF: Objection to the 9 form. The document doesn't state that. Why 10 don't you ask him a question? 11 MR. ACKELSBURG: I just did 12 that. 13 MR. SCHEFF: Yeah, but you 14 keep on misstating the record and 15 mischaracterizing this to try and put 16 testimony in his mouth. Just ask a 17 straightforward question. That's all. Go 18 ahead. 19 MR. ACKELSBURG: You enjoy 20 this, don't you? 21 MR. SCHEFF: I just want to 22 make sure that the record is clear because you 23 just want to do the opposite. So just ask a 24 question.</p>	<p style="text-align: right;">Page 159</p> <p>1 economic risk, I put the transaction in Haynes 2 Investments. And Ray and I had an agreement 3 that he would get 50 percent of the economic 4 benefit that I got, of the 1 percent, which I 5 paid faithfully until we were terminated. 6 Q. Is that -- is that in writing, or is 7 that just an oral deal, a handshake? 8 A. I believe it was just an oral, just a 9 handshake. 10 Q. Okay. Also in the term sheet, there's 11 no reference to the -- let me go back. 12 We were talking before about 13 the reason that Think Finance was in such a 14 hurry, they had this other portfolio and in 15 some fashion, they wanted to locate that with 16 the first tribal partner that they found. Do 17 you remember that? We were talking about 18 that. 19 MR. SCHEFF: Object to the 20 form. Mischaracterizes the testimony. You 21 can answer the question. 22 THE WITNESS: I remember the 23 conversation that Think Finance was looking to 24 place this with a tribe as quickly as they</p>
<p style="text-align: right;">Page 158</p> <p>1 BY MR. ACKELSBURG: 2 Q. So I'm not asking what the document 3 says. I'm asking you your -- your 4 recollection during this transaction, the 5 lawyer who was looking out for your interest 6 was Tim Anderson of Pepper Hamilton, correct? 7 A. That's correct. 8 Q. Okay. One question I had -- if you can 9 go back to the term sheet for a second. It 10 says Haynes Investments. It doesn't say 11 AGame NV. Originally you told us this was 12 going to be -- this had to do with you and Ray 13 Brown and I think -- Haynes Investments is 14 just you, right? That's not Ray Brown? 15 A. Haynes Investments is owned 100 percent 16 by me, correct. 17 Q. Okay. So what happened that it started 18 with AGame NV and it became Haynes 19 Investments? 20 A. At the time of this transaction when it 21 became clear that money was needed to be 22 raised and loaned to the tribe, Ray did not 23 have the wherewithal to put in any money. 24 Since I alone was going to be taking that</p>	<p style="text-align: right;">Page 160</p> <p>1 possibly could. 2 BY MR. ACKELSBURG: 3 Q. And it had to do with the fact that they 4 had existing customers that -- 5 A. Yeah, I -- 6 Q. You're not remembering that now or -- 7 A. The specific reason of the customers 8 they had and the loans and they were -- they 9 were in a hurry to find a tribal partner, and 10 I can't tell you exactly why that was the 11 case. 12 Q. All right. And there's no reference in 13 the term sheet to the -- that existing loan 14 portfolio or the customers of the existing 15 loan portfolio. There's nothing about that in 16 the term sheet, is there? I mean, I don't see 17 any. 18 MR. SCHEFF: Object to the 19 form. The document speaks for itself. 20 BY MR. ACKELSBURG: 21 Q. And I'm just wondering if you remember 22 whether there was any reason that wasn't 23 mentioned, or do you remember anything about 24 that, that aspect of the transaction?</p>

<p style="text-align: right;">Page 173</p> <p>1 guaranteed payment and not repayable, right?</p> <p>2 MR. SCHEFF: Object to the</p> <p>3 form. You can answer the question. The</p> <p>4 document speaks for itself.</p> <p>5 THE WITNESS: The \$50,000</p> <p>6 refers, yes, to a guaranteed payment and not a</p> <p>7 loan or not a -- not to be repaid, which I</p> <p>8 would consider a loan.</p> <p>9 MR. ACKELSBURG: 351.</p> <p>10 ---</p> <p>11 (Whereupon Exhibit P-351 was marked for</p> <p>12 identification.)</p> <p>13 - - -</p> <p>14 THE WITNESS: Yes, sir.</p> <p>15 BY MR. ACKELSBURG:</p> <p>16 Q. Okay. Now, the context to this is that</p> <p>17 everybody is drafting the final transactional</p> <p>18 documents, right, arising out of the term</p> <p>19 sheet?</p> <p>20 A. That's what this appears to say, yes.</p> <p>21 Q. Yeah. And so Scott Lyons from the</p> <p>22 Katten firm said that he's updated the</p> <p>23 participation agreement with various changes</p> <p>24 below, but he's still waiting for Ken to</p>	<p style="text-align: right;">Page 175</p> <p>1 revenues of 50,000, right?</p> <p>2 MR. HERMAN: Objection to</p> <p>3 form.</p> <p>4 THE WITNESS: My</p> <p>5 understanding is that, yes, the tribe wanted a</p> <p>6 guaranteed income stream, \$50,000 a month.</p> <p>7 BY MR. ACKELSBURG:</p> <p>8 Q. And then what we see here is Ken Rees</p> <p>9 agreeing to that provision, that Think Finance</p> <p>10 would guarantee that, right?</p> <p>11 MR. HERMAN: Objection to</p> <p>12 form. The document speaks for itself.</p> <p>13 BY MR. ACKELSBURG:</p> <p>14 Q. Isn't that what happened?</p> <p>15 MR. HERMAN: Objection to</p> <p>16 form. The document speaks for itself.</p> <p>17 THE WITNESS: Ken Rees's</p> <p>18 reply is -- it looks like yes, he has agreed</p> <p>19 to a 50,000-dollar minimum payment.</p> <p>20 BY MR. ACKELSBURG:</p> <p>21 Q. Okay. What I'm going to show you now</p> <p>22 are the deal documents that ultimately were</p> <p>23 signed that pertain to you, Stephen Haynes.</p> <p>24 I know there were a lot of -- you know,</p>
<p style="text-align: right;">Page 174</p> <p>1 decide whether, I guess, Think is going to</p> <p>2 guarantee that \$50,000 that the tribe wanted?</p> <p>3 MR. HERMAN: Objection to</p> <p>4 form. The document speaks for itself.</p> <p>5 MR. SCHEFF: Object to the</p> <p>6 form.</p> <p>7 BY MR. ACKELSBURG:</p> <p>8 Q. That's what's going on, right?</p> <p>9 MR. HERMAN: Objection to</p> <p>10 form. The document speaks for itself.</p> <p>11 THE WITNESS: Yeah. From</p> <p>12 Scott Lyons to Rick and it's -- with the</p> <p>13 exception of -- it seems like they haven't</p> <p>14 settled that yet.</p> <p>15 BY MR. ACKELSBURG:</p> <p>16 Q. It's the \$50,000 that we looked at</p> <p>17 before, right?</p> <p>18 A. I'm not sure --</p> <p>19 MR. SCHEFF: Object to the</p> <p>20 form.</p> <p>21 BY MR. ACKELSBURG:</p> <p>22 Q. We were just looking at the -- so Rick</p> <p>23 Eckman reported back from the meeting that the</p> <p>24 tribe wanted a guaranteed -- wanted guaranteed</p>	<p style="text-align: right;">Page 176</p> <p>1 there's participation -- there were a lot</p> <p>2 of -- participation agreement, have you ever</p> <p>3 studied that? Have you ever looked at that?</p> <p>4 MR. HERMAN: Objection to</p> <p>5 form.</p> <p>6 THE WITNESS: No, I have not.</p> <p>7 BY MR. ACKELSBURG:</p> <p>8 Q. Or the administrative agency agreement</p> <p>9 or the guarantee treatment? Those didn't</p> <p>10 concern you, right?</p> <p>11 A. Correct.</p> <p>12 Q. I want to show you the specific</p> <p>13 documents in which you were involved or</p> <p>14 interested in with regard to the 1 percent and</p> <p>15 with regard to the loan to the tribe. Okay?</p> <p>16 A. Okay.</p> <p>17 MR. HERMAN: Objection to</p> <p>18 form.</p> <p>19 BY MR. ACKELSBURG:</p> <p>20 Q. And these have already been identified</p> <p>21 in previous exhibits. So I'm going to just</p> <p>22 show you these --</p> <p>23 MR. ACKELSBURG: And I have a</p> <p>24 copy for everyone else.</p>

<p style="text-align: right;">Page 177</p> <p>1 BY MR. ACKELSBURG:</p> <p>2 Q. I'm going to start with the referral</p> <p>3 agreement, which is P-132. I think that's on</p> <p>4 top.</p> <p>5 A. Yes, sir.</p> <p>6 Q. Just looking at it, I mean, you're</p> <p>7 familiar with this agreement; am I right?</p> <p>8 Actually, if you want, we'll go to the --</p> <p>9 A. I am familiar with this agreement.</p> <p>10 Q. Yeah. And you can go to the</p> <p>11 next-to-last page. I believe that's your</p> <p>12 signature?</p> <p>13 A. That is my signature.</p> <p>14 Q. Yeah. So you signed and Ken Rees</p> <p>15 signed, right?</p> <p>16 A. Correct.</p> <p>17 Q. Okay. At this point, you still hadn't</p> <p>18 met Ken Rees yet, right?</p> <p>19 A. Correct.</p> <p>20 Q. This agreement is between Haynes and --</p> <p>21 between Haynes Investments and something</p> <p>22 called TC Administrative Services or TCAS. Do</p> <p>23 you see that?</p> <p>24 A. Yes, I see that.</p>	<p style="text-align: right;">Page 179</p> <p>1 with. You remember doing that, right?</p> <p>2 MR. SCHEFF: Object to the</p> <p>3 form.</p> <p>4 BY MR. ACKELSBURG:</p> <p>5 Q. Continuing to look for tribes for Think</p> <p>6 Finance?</p> <p>7 MR. SCHEFF: Object to the</p> <p>8 form. You can answer the question.</p> <p>9 THE WITNESS: Think Finance</p> <p>10 had asked us to continue looking to find them</p> <p>11 additional tribes. That's correct.</p> <p>12 BY MR. ACKELSBURG:</p> <p>13 Q. So my question is, when you were doing</p> <p>14 that, did that have any connection to this</p> <p>15 language, that you're providing ongoing</p> <p>16 consulting services? In other words, were you</p> <p>17 doing that pursuant -- in searching for other</p> <p>18 tribes, were you doing that pursuant to any</p> <p>19 obligation you had under the referral</p> <p>20 agreement, or was that just separate business?</p> <p>21 A. My understanding is that the referral</p> <p>22 agreement was specific to this one transaction</p> <p>23 to Plain Green, and that if I was going to be</p> <p>24 doing other things that they would retain me</p>
<p style="text-align: right;">Page 178</p> <p>1 Q. Had you ever heard of that company</p> <p>2 before you were handed this to sign?</p> <p>3 A. I'm not sure if I had seen it in one of</p> <p>4 the preliminary term sheets, but this is --</p> <p>5 it's a recent review.</p> <p>6 Q. Do you know what role TCAS played in the</p> <p>7 transaction?</p> <p>8 A. I do not.</p> <p>9 Q. One of the whereas -- the next-to-last</p> <p>10 whereas on the first page, it says "Whereas</p> <p>11 Haynes Investments assisted in establishing</p> <p>12 the program as defined below and will provide</p> <p>13 ongoing consulting services to TCAS in</p> <p>14 connection with the program." Do you see</p> <p>15 that?</p> <p>16 A. Yes, I see that.</p> <p>17 Q. Okay. My question is, did you ever</p> <p>18 provide consulting services?</p> <p>19 A. I do not believe that I did.</p> <p>20 Q. Okay. Now, we're going to be looking at</p> <p>21 some e-mails later on about your</p> <p>22 communications or your efforts on behalf of</p> <p>23 Think Finance to perhaps locate another tribe</p> <p>24 or other tribes that they could do business</p>	<p style="text-align: right;">Page 180</p> <p>1 or compensate me for those additional.</p> <p>2 Q. Okay. Let's look at next agreement,</p> <p>3 P-244. This is the credit agreement between</p> <p>4 Plain Green and Haynes Investments, and this</p> <p>5 references a 2-million-dollar credit facility.</p> <p>6 A. Yes.</p> <p>7 Q. And in the earlier documents, we were</p> <p>8 talking about 1 million and now it's here</p> <p>9 2 million. Do you see that?</p> <p>10 A. In the earlier document, it suggested</p> <p>11 that I would deposit 1 million dollars into a</p> <p>12 checking account. This is a credit agreement</p> <p>13 with a line of credit for 2 million dollars.</p> <p>14 Q. And were there -- and we're going to be</p> <p>15 looking at the credit agreement that mirrors</p> <p>16 this between you and Think Finance. You can</p> <p>17 see that's underneath. It's 245. You see</p> <p>18 that?</p> <p>19 A. Yes, sir. I see the document.</p> <p>20 Q. Okay. And you remember that, right?</p> <p>21 That it was -- that you were agreeing to lend</p> <p>22 the tribe up to 2 million dollars to originate</p> <p>23 the loans, right?</p> <p>24 A. That is correct.</p>

<p style="text-align: right;">Page 181</p> <p>1 Q. And you were borrowing that same --</p> <p>2 whatever money that the tribe borrowed from</p> <p>3 you, you would be borrowing from Think</p> <p>4 Finance, that was the idea behind these</p> <p>5 contracts?</p> <p>6 A. They're two standalone documents. One</p> <p>7 is I agreed to lend up to 2 million dollars to</p> <p>8 Plain Green. The second agreement was that I</p> <p>9 agreed that I would borrow up to 2 million</p> <p>10 dollars from Think Finance.</p> <p>11 But there was no guarantees</p> <p>12 that Think Finance would be able to live up to</p> <p>13 their ability to loan me 2 million dollars at</p> <p>14 any given time. I still had an obligation to</p> <p>15 loan the money to Plain Green. So I just --</p> <p>16 one line of credit is only as good as the</p> <p>17 money you can provide on it.</p> <p>18 Q. Okay. Now, staying with the agreement</p> <p>19 between you and Plain Green, 244?</p> <p>20 A. Yes, sir.</p> <p>21 Q. Can you turn to page 10? I want you to</p> <p>22 look at pages 10 and 11. Well, let's just</p> <p>23 stick with 10. And you can look back at page</p> <p>24 9 as well, if you need to. In this provision,</p>	<p style="text-align: right;">Page 183</p> <p>1 Eckman and Anderson or?</p> <p>2 A. I'm not sure who drafted it. Tim</p> <p>3 Anderson reviewed it for me, but I'm not sure</p> <p>4 who drafted the entire set of documents.</p> <p>5 Q. Okay. And when you got the documents --</p> <p>6 how did you get the documents? Was this by</p> <p>7 mail? Were you in person? Were you at the</p> <p>8 Pepper office or how -- how did you sign --</p> <p>9 how did the closing occur here?</p> <p>10 MR. HERMAN: Objection to</p> <p>11 form?</p> <p>12 THE WITNESS: The closing of</p> <p>13 this transaction happened in Las Vegas in a</p> <p>14 conference room, and I would have gotten the</p> <p>15 documents -- I'm not sure if I got them</p> <p>16 e-mailed in advance, but it would be,</p> <p>17 obviously, hand-delivered paper copies.</p> <p>18 BY MR. ACKELSBURG:</p> <p>19 Q. And who was in the conference room? Who</p> <p>20 was there at the closing?</p> <p>21 A. I have a picture on my laptop. I'm just</p> <p>22 trying to remember all the faces. But it was</p> <p>23 Robin Kovash, Rick Eckman, Tim Anderson,</p> <p>24 myself, Billi Anne, Neal, a couple other</p>
<p style="text-align: right;">Page 182</p> <p>1 it's a waiver of sovereign immunity. Page 10.</p> <p>2 A. Okay. I'm there.</p> <p>3 Q. So on page 10, the tribe is waiving</p> <p>4 sovereign immunity, right?</p> <p>5 A. That's correct.</p> <p>6 Q. And then on the previous page, on page</p> <p>7 9, the parties are also agreeing that the laws</p> <p>8 of Delaware will be the interpretive law</p> <p>9 governing this contract, right?</p> <p>10 A. That's Section 1.12 (witness reading</p> <p>11 document) -- deemed to be made in the State of</p> <p>12 Delaware. That's correct.</p> <p>13 Q. Okay. Now, why -- well, was it</p> <p>14 important to you that the tribe waive their</p> <p>15 sovereign immunity?</p> <p>16 A. I will not do a financial transaction</p> <p>17 with a tribe unless it waives its sovereign</p> <p>18 immunity with regards to that specific loan</p> <p>19 document or transaction.</p> <p>20 Q. And why is that?</p> <p>21 A. As a sovereign nation, if they don't</p> <p>22 wave their sovereign immunity, it is very</p> <p>23 difficult for you to collect on your debts.</p> <p>24 Q. And who drafted this for you? Was this</p>	<p style="text-align: right;">Page 184</p> <p>1 attorneys that I may have met for the first</p> <p>2 time. The chairman was there. I'm not sure</p> <p>3 who else.</p> <p>4 Q. What about from Pepper, who was there?</p> <p>5 A. I remember Tim and I remember Rick</p> <p>6 Eckman.</p> <p>7 Q. Is that the first time you actually met</p> <p>8 Rick Eckman face-to-face?</p> <p>9 A. It may have been.</p> <p>10 Q. And when you were sitting there, you</p> <p>11 were -- were you with Anderson, your lawyer?</p> <p>12 A. Yes. Yes, Tim was with me.</p> <p>13 Q. What about Eckman, was he kind of</p> <p>14 running the show? I'm still trying to figure</p> <p>15 out what he's doing there.</p> <p>16 MR. SCHEFF: Object to the</p> <p>17 form. You can answer the question if you can.</p> <p>18 THE WITNESS: I'm not sure</p> <p>19 what all of the different roles were at the</p> <p>20 closing of who was compiling documents, who</p> <p>21 was printing them.</p> <p>22 BY MR. ACKELSBURG:</p> <p>23 Q. There didn't seem to be anyone kind of</p> <p>24 in charge of putting the papers around or</p>

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<p>1 explaining what's going on?</p> <p>2 A. I don't remember it being a meeting like</p> <p>3 this. I remember it being -- there was a room</p> <p>4 full of documents; go in and sign. I don't</p> <p>5 even remember the Think Finance people that</p> <p>6 were there. It was just a convenient place</p> <p>7 because nobody wanted to go to the</p> <p>8 reservation, and everybody else was spread</p> <p>9 out -- Chicago, Delaware, Dallas. So we</p> <p>10 assembled there and I'm actually not sure -- I</p> <p>11 remember seeing a picture of all of us</p> <p>12 together after the fact.</p> <p>13 Q. And you have that picture on your</p> <p>14 computer?</p> <p>15 A. Somewhere, yes.</p> <p>16 Q. So you could retrieve that picture --</p> <p>17 A. I should be able to.</p> <p>18 Q. -- if your lawyer asked you to?</p> <p>19 A. Yes.</p> <p>20 Q. Please ask him to.</p> <p>21 MR. SCHEFF: We'll take it</p> <p>22 under advisement.</p> <p>23 MR. ACKELSBURG: Thank you.</p> <p>24 BY MR. ACKELSBURG:</p>	<p>1 MR. SCHEFF: That's fine.</p> <p>2 MR. ACKELSBURG: This is</p> <p>3 fine.</p> <p>4 MR. SCHEFF: It's 12:20</p> <p>5 already.</p> <p>6 VIDEOTAPE OPERATOR: The time</p> <p>7 is 12:22. We are off the record.</p> <p>8 - - -</p> <p>9 (Whereupon a lunch break was taken at this</p> <p>10 time.)</p> <p>11 - - -</p> <p>12 VIDEOTAPE OPERATOR: This</p> <p>13 begins DVD number three. The time is 12:57.</p> <p>14 We're on the record.</p> <p>15 - - -</p> <p>16 (Whereupon Exhibit P-352 was marked for</p> <p>17 identification.)</p> <p>18 - - -</p> <p>19 BY MR. ACKELSBURG:</p> <p>20 Q. Mr. Haynes, earlier this morning --</p> <p>21 first of all, I want to apologize. Earlier</p> <p>22 this morning, I showed you a PowerPoint, a</p> <p>23 deck, that I thought might be the one that</p> <p>24 Jason showed you until your attorney informed</p>
Page 186	Page 188
<p>1 Q. Do you remember who was there for</p> <p>2 Victory Park?</p> <p>3 A. I don't.</p> <p>4 Q. Did you meet some of the Katten lawyers</p> <p>5 there? What about Scott Lyons, who was on</p> <p>6 some of the e-mails?</p> <p>7 A. There were faces that I didn't know</p> <p>8 there.</p> <p>9 Q. Okay. And you just flew in, signed the</p> <p>10 papers, and left?</p> <p>11 A. I'm in the gaming business. I may have</p> <p>12 stayed and visited some of my clients that</p> <p>13 were out in Las Vegas.</p> <p>14 MR. SCHEFF: We've been going</p> <p>15 for awhile.</p> <p>16 MR. ACKELSBURG: Mm-hmm.</p> <p>17 MR. SCHEFF: So we should</p> <p>18 look for a break point.</p> <p>19 MR. ACKELSBURG: We can do it</p> <p>20 now, if you'd like.</p> <p>21 MR. SCHEFF: It's totally up</p> <p>22 to you. We've been going for a while.</p> <p>23 MR. ACKELSBURG: I agree. I</p> <p>24 was thinking 12:30-ish, but --</p>	<p>1 me that among the documents that he sent at</p> <p>2 4:30 yesterday afternoon was the actual one.</p> <p>3 So in the interim, I had my</p> <p>4 office prepare copies, which I believe we have</p> <p>5 in front of you, marked as Plaintiff's</p> <p>6 Exhibit 352. And you will see this has a</p> <p>7 Haynes marking at the bottom. This actually</p> <p>8 came -- see the number of the bottom?</p> <p>9 A. Oh, yes. I'm sorry. Yes.</p> <p>10 Q. Thank you. Can we agree that 352 is the</p> <p>11 actual paper deck that Jason left with you</p> <p>12 back in February of 2011 when he was first</p> <p>13 pitching the idea to you?</p> <p>14 A. Yes. This is the deck that I remember.</p> <p>15 Q. And, in fact, there are some --</p> <p>16 throughout, there are some handwritten notes</p> <p>17 in various colored ink. Do you see that?</p> <p>18 A. Yes, sir.</p> <p>19 Q. And these would have been your notes,</p> <p>20 right?</p> <p>21 A. These are my notes, correct.</p> <p>22 Q. Okay. So I'm going to have you -- let's</p> <p>23 go through it and see what you remember about</p> <p>24 Jason's presentation, just to -- so if you</p>

<p style="text-align: right;">Page 189</p> <p>1 could situate this meeting, when he's showing 2 this to you, you're in your house, your 3 apartment, in your residence, right? And it's 4 just you and him, right? 5 A. Jason and I are sitting in a conference 6 room in my -- in the building that I lived, 7 and it was just he and I across the table with 8 this deck. 9 Q. Okay. So he's got one and you've got 10 one, and you're going through it? 11 A. That's what I remember, yes. 12 Q. And did you go through it page by page? 13 A. Yes. I would have gone through it page 14 by page. 15 Q. So on the first page, anything about the 16 information on the first page that you 17 remember that you can elaborate on in terms of 18 Jason's pitch to you? 19 MR. SCHEFF: Object to the 20 form. 21 THE WITNESS: Nothing that 22 stands out. I remember at this point, I 23 didn't know very much about anything, so I was 24 being educated.</p>	<p style="text-align: right;">Page 191</p> <p>1 solution like on the version I showed. You 2 see that? 3 MR. SCHEFF: Object to the 4 form. 5 THE WITNESS: I see the 6 comparison, yes. 7 BY MR. ACKELSBURG: 8 Q. And so why don't you explain, if you 9 can, your notations and what they indicate. 10 A. The asterisk next to the guaranteed 11 minimum revenue of 50,000 a month would be 12 something that the tribe would be very 13 interested in. At this point, I had been 14 shown or explained that the split would be, 15 you know, there's 5 percent. 16 And I believe that Jason and 17 I just talked about revenue at this point and 18 what it would look like. And I conveyed to 19 him that top-line revenue is really important 20 to tribes and not a, you know, bottom-line or 21 an equity slice. It was easier for them to 22 understand, number one. 23 Number two, they couldn't get 24 pencil-whipped by expense generation or other</p>
<p style="text-align: right;">Page 190</p> <p>1 BY MR. ACKELSBURG: 2 Q. Okay. Do you remember anything in 3 particular about credit options or 4 disappearing? It's the middle item? 5 A. This was 2011. I just remember we had 6 just come through the disaster, which was '08, 7 '09, and just from my personal standpoint, 8 credit was difficult for any business. 9 Q. You thought that might be what this was 10 referring to? 11 MR. HERMAN: Objection to 12 form. 13 THE WITNESS: I just remember 14 the general feeling about lending and having 15 just kind of lived as a real estate guy 16 watching mortgages and credit lines just 17 disappear because of the issue with the 18 sub-prime. 19 BY MR. ACKELSBURG: 20 Q. All right. So let's flip the page. And 21 now we're on the actual page 3 that looks a 22 little like the page 3 that we were looking at 23 before, but now this is the actual one. Okay? 24 And you see there is reference to the turnkey</p>	<p style="text-align: right;">Page 192</p> <p>1 things. It looks to me like the form 1 was 2 the proposed split for the tribe and myself. 3 Q. Would that indicate that -- ultimately, 4 it ends up being 5 1/2 percent, right? 5 A. Ultimately, it ended up being 4.5 to the 6 tribe and 1 to me. 7 Q. Right. So it looks like here that maybe 8 initially Jason might have said to you 4 and 1 9 instead of 4 1/2 and 1? 10 MR. SCHEFF: Object to the 11 form. You can answer. 12 THE WITNESS: It's very 13 possible that he -- that it's maybe 5 percent 14 total compensation available. 15 BY MR. ACKELSBURG: 16 Q. And then maybe Steve Shaper in the 17 later -- in the e-mail that we looked at a 18 couple days later was perhaps trying to make 19 the deal even more attractive? 20 MR. SCHEFF: Object to the 21 form. Calls for speculation. You can answer 22 if you can. 23 THE WITNESS: I don't 24 remember how far the negotiations or</p>

<p style="text-align: right;">Page 209</p> <p>1 Q. With regard to the website, that it</p> <p>2 would be Think Finance's job to come up with a</p> <p>3 website and manage it?</p> <p>4 A. That wasn't spoken. They showed me an</p> <p>5 example. I don't know who made the Great</p> <p>6 Plains website. It just existed for another</p> <p>7 tribe already.</p> <p>8 Q. You didn't think the Otoe-Missouria made</p> <p>9 a website, did you?</p> <p>10 MR. SCHEFF: Objection to</p> <p>11 form. You can answer the question.</p> <p>12 THE WITNESS: I don't know</p> <p>13 that I had an impression at all about who made</p> <p>14 it. I didn't ask the question.</p> <p>15 BY MR. ACKELSBURG:</p> <p>16 Q. Did you have any expectation -- you</p> <p>17 didn't tell the tribe they were going to have</p> <p>18 to run a website themselves, did you?</p> <p>19 MR. SCHEFF: Object to the</p> <p>20 form.</p> <p>21 THE WITNESS: I didn't relay</p> <p>22 any kind of information like that to the</p> <p>23 tribe. What I did was I passed along a</p> <p>24 business opportunity and I traditionally</p>	<p style="text-align: right;">Page 211</p> <p>1 MR. SCHEFF: Object to the</p> <p>2 form.</p> <p>3 THE WITNESS: That is the</p> <p>4 belief we had, yes.</p> <p>5 BY MR. ACKELSBURG:</p> <p>6 Q. This is a little out of chronological</p> <p>7 sequence, but among the documents that were</p> <p>8 produced last night were a couple that I</p> <p>9 hadn't seen before that are sort of as the</p> <p>10 deal was being negotiated, so adding to the</p> <p>11 e-mails that we were looking at before. I</p> <p>12 want to show you this one.</p> <p>13 - - -</p> <p>14 (Whereupon Exhibit P-353 was marked for</p> <p>15 identification.)</p> <p>16 - - -</p> <p>17 BY MR. ACKELSBURG:</p> <p>18 Q. Do you remember this e-mail?</p> <p>19 A. I remember this e-mail.</p> <p>20 Q. All right. So this is an e-mail from</p> <p>21 Neal Rosette to you. And am I correct that he</p> <p>22 is sort of going over all of the things that</p> <p>23 they are doing to try to comply with the tight</p> <p>24 timeline that -- but that he has some</p>
<p style="text-align: right;">Page 210</p> <p>1 turned it over to the experts to explain which</p> <p>2 each of the roles were going to be.</p> <p>3 BY MR. ACKELSBURG:</p> <p>4 Q. So you didn't -- it wasn't like you were</p> <p>5 telling the tribe they had any particular</p> <p>6 obligations if they said yes to this?</p> <p>7 A. With this document in my hand, passing</p> <p>8 it over to Ray, Ray taking it to the tribe, it</p> <p>9 was like, here's a business opportunity,</p> <p>10 here's the deck, take a look. If it's</p> <p>11 something you're interested in, let us know.</p> <p>12 Q. Okay. So that's the process that you --</p> <p>13 that's what you actually did. You took the</p> <p>14 deck, you gave it to Ray and Ray took this</p> <p>15 deck to the tribe?</p> <p>16 A. That's correct. We also sent this deck</p> <p>17 out to a couple of other tribes, as well.</p> <p>18 Q. Of potential partners if the --</p> <p>19 A. If they met our criteria of having a</p> <p>20 lending business already and casino and</p> <p>21 looking for economic development, yes.</p> <p>22 Q. And if it didn't work out with Rocky</p> <p>23 Boy, maybe another tribe would be interested</p> <p>24 in partnering with Think Finance?</p>	<p style="text-align: right;">Page 212</p> <p>1 concerns, right?</p> <p>2 A. He is spelling out the tasks that either</p> <p>3 they completed or are completing to try to get</p> <p>4 this deal done as quickly as they possibly</p> <p>5 can.</p> <p>6 Q. In the paragraph, you see it says: My</p> <p>7 Team?</p> <p>8 A. Yes.</p> <p>9 Q. Me, Billi Anne and Robin have worked</p> <p>10 feverishly to get our end of this deal</p> <p>11 complete, and will continue through the</p> <p>12 weekend, if necessary. And then he says: We</p> <p>13 didn't do all of this work to have this deal</p> <p>14 end up in a trash can. When I asked you for a</p> <p>15 portion of the development fee, I was not</p> <p>16 asking for something that was not earned. As</p> <p>17 you can see from -- what's he talking about,</p> <p>18 the development fee?</p> <p>19 MR. SCHEFF: Object to the</p> <p>20 form. Answer the question if you can.</p> <p>21 THE WITNESS: It's my</p> <p>22 recollection that Neal and Billi Anne asked</p> <p>23 for a \$10,000 development fee, rather than a</p> <p>24 \$20,000 development fee, for them to take on</p>

<p style="text-align: right;">Page 213</p> <p>1 this possibility and run it through all of</p> <p>2 their different tribal business entities and</p> <p>3 their attorney to get it done.</p> <p>4 BY MR. ACKELSBURG:</p> <p>5 Q. Was that paid?</p> <p>6 A. It was paid when the deal closed. Maybe</p> <p>7 it was upon signing the term sheet, one or the</p> <p>8 other, but it was paid when --</p> <p>9 Q. Who paid that?</p> <p>10 A. It was paid by me, I wired it to Robin</p> <p>11 Kovash.</p> <p>12 Q. Was that your own money that you used or</p> <p>13 was it reimbursed by Think Finance?</p> <p>14 A. It was reimbursed by Think Finance. I</p> <p>15 don't know whether I fronted it first or they</p> <p>16 paid me and I used it to disburse legal fees</p> <p>17 and development fees.</p> <p>18 Q. I didn't see reference to that in the</p> <p>19 documents, maybe it was there. But how did</p> <p>20 you communicate that -- so its 10,000 for each</p> <p>21 of them?</p> <p>22 A. I believe it was 10,000 for each of</p> <p>23 them.</p> <p>24 Q. Who did you communicate that to, that</p>	<p style="text-align: right;">Page 215</p> <p>1 I had, it would be made clear that at some</p> <p>2 point I would be reimbursed for any expenses</p> <p>3 incurred doing the deal, if the deal was</p> <p>4 successful and closed, or unless they approved</p> <p>5 my distributing the money, knowing it would be</p> <p>6 a risk if the deal hadn't closed.</p> <p>7 Q. Who -- with regard to this transaction,</p> <p>8 who are you looking to for that reimbursement?</p> <p>9 It would be Think, right?</p> <p>10 MR. HERMAN: Objection to</p> <p>11 form.</p> <p>12 THE WITNESS: In this case,</p> <p>13 in this transaction, Think Finance was the</p> <p>14 ultimate party that would reimburse my</p> <p>15 expenses, yes.</p> <p>16 BY MR. ACKELSBURG:</p> <p>17 Q. Because they were retaining you to find</p> <p>18 a partner for them.</p> <p>19 MR. SCHEFF: Object to the</p> <p>20 form.</p> <p>21 THE WITNESS: They contacted</p> <p>22 me to find them a partner and they eventually</p> <p>23 signed a finder's fee agreement with me.</p> <p>24 BY MR. ACKELSBURG:</p>
<p style="text-align: right;">Page 214</p> <p>1 they wanted 10,000 each to do the deal?</p> <p>2 A. I would have communicated that to Jason</p> <p>3 Harvison.</p> <p>4 Q. Do you remember Jason okaying that, how</p> <p>5 did he okay -- eventually it was approved,</p> <p>6 right?</p> <p>7 MR. SCHEFF: Objection to</p> <p>8 form.</p> <p>9 MR. SHELTON: Objection.</p> <p>10 BY MR. ACKELSBURG:</p> <p>11 Q. I think you said it was approved?</p> <p>12 A. The money was paid, so it must have been</p> <p>13 approved.</p> <p>14 Q. But you don't remember how that</p> <p>15 happened?</p> <p>16 A. I remember in my negotiations with Jason</p> <p>17 that I got reimbursed for expenses, but as</p> <p>18 typical in all my transactions, I'd have to go</p> <p>19 back to the corporation and have them approve</p> <p>20 them before they were spent.</p> <p>21 Q. Okay. Which corporation are you</p> <p>22 referring to?</p> <p>23 A. Any corporation I was trying to do</p> <p>24 business on a tribal land. Any customer that</p>	<p style="text-align: right;">Page 216</p> <p>1 Q. That being the referral, the agreements</p> <p>2 that we've looked at before?</p> <p>3 A. Yes, sir.</p> <p>4 Q. Do you know if that \$10,000 to Billi</p> <p>5 Anne and Neal had to get approved by the tribe</p> <p>6 or was that a personal deal?</p> <p>7 A. With all of my dealings with the tribes,</p> <p>8 I always had any disbursements approved by</p> <p>9 whatever entity needed to approve it, whether</p> <p>10 it's a tribal council, the president of a</p> <p>11 division or whatever -- however they were</p> <p>12 structured.</p> <p>13 Q. So it was clear and transparent to all</p> <p>14 concerned in the transaction, including the</p> <p>15 tribe, that Billi Anne and Neal were going to</p> <p>16 get a development fee of 10,000 a piece.</p> <p>17 MR. SCHEFF: Object to the</p> <p>18 form. You can answer.</p> <p>19 THE WITNESS: I don't know</p> <p>20 who all in the tribe knew it. I knew that</p> <p>21 Robin Kovash sent me back an e-mail saying</p> <p>22 that the transaction had been approved and</p> <p>23 that he was okay to disburse that money to</p> <p>24 Billi Anne and Neal.</p>

<p style="text-align: right;">Page 217</p> <p>1 - - -</p> <p>2 (Whereupon Exhibit P-354 was marked for</p> <p>3 identification.)</p> <p>4 - - -</p> <p>5 THE WITNESS: Yes, sir.</p> <p>6 BY MR. ACKELSBERG:</p> <p>7 Q. Mr. Haynes, do you recall in the term</p> <p>8 sheet that it made reference to certain</p> <p>9 advances being made either by Haynes -- I</p> <p>10 think it said either by Haynes or Pepper or</p> <p>11 Haynes and -- Haynes or Think, I think. I</p> <p>12 think it was to the lawyers, right, that</p> <p>13 either Haynes or Think Finance would be</p> <p>14 advancing certain money to the two law firms,</p> <p>15 Jones Keller and Pepper Hamilton. Do you</p> <p>16 remember that?</p> <p>17 A. Yeah, the draft term sheets and the</p> <p>18 final term sheets continued to move. As you</p> <p>19 know, this is a fast transaction. I would</p> <p>20 have tried to have plugged in who was getting</p> <p>21 paid whenever it was available.</p> <p>22 I had no authority to spend</p> <p>23 anybody else's money. So whether it was</p> <p>24 verbal or put into term sheets, I would ask</p>	<p style="text-align: right;">Page 219</p> <p>1 A. This looks like it just pertains to all</p> <p>2 of the tribes' lending codes and ordinances</p> <p>3 and laws.</p> <p>4 Q. Was it your understanding that all of</p> <p>5 that had to be reviewed and approved by</p> <p>6 Victory Park or their counsel?</p> <p>7 A. I don't remember. It is very typical</p> <p>8 for a corporation doing business with tribes,</p> <p>9 for their attorneys and for those companies</p> <p>10 themselves to ask for whatever documents they</p> <p>11 need to understand if they'll be able to</p> <p>12 successfully build a business and get paid for</p> <p>13 it. So this would be typical of one of the</p> <p>14 requests that I would have gotten.</p> <p>15 - - -</p> <p>16 (Whereupon Exhibit P-355 was marked for</p> <p>17 identification.)</p> <p>18 - - -</p> <p>19 THE WITNESS: Yes, sir.</p> <p>20 BY MR. ACKELSBERG:</p> <p>21 Q. So this is also related to Victory</p> <p>22 Park's review of tribal legal documents. This</p> <p>23 is sort of on the same topic to the last thing</p> <p>24 we were looking at. Victory Park needed to do</p>
<p style="text-align: right;">Page 218</p> <p>1 and get permission for some kind of payment</p> <p>2 before it was paid.</p> <p>3 Q. So in fact you were a conduit for</p> <p>4 payments to Mr. Kovash?</p> <p>5 MR. SCHEFF: Object to the</p> <p>6 form.</p> <p>7 THE WITNESS: I paid Mr.</p> <p>8 Kovash the \$75,000 from one of my accounts.</p> <p>9 BY MR. ACKELSBERG:</p> <p>10 Q. And then you were reimbursed?</p> <p>11 A. Yes, sir, and then I was reimbursed.</p> <p>12 Q. By Think Finance?</p> <p>13 A. Correct.</p> <p>14 Q. What about payments to Pepper, did the</p> <p>15 same thing happen there?</p> <p>16 A. I don't remember making any payments to</p> <p>17 Pepper. I believe they were paid at closing,</p> <p>18 but I'm not sure.</p> <p>19 Q. Then it makes reference to VPCs tribal</p> <p>20 review, do you see that? It's from you to</p> <p>21 Robin Kovash saying, I need some help with</p> <p>22 this document.</p> <p>23 A. Yes, sir. I see that.</p> <p>24 Q. What is that about, if you remember?</p>	<p style="text-align: right;">Page 220</p> <p>1 some additional review of tribal documents.</p> <p>2 MR. SHAPIRO: Object to the</p> <p>3 form, go ahead.</p> <p>4 THE WITNESS: My</p> <p>5 understanding is that this was requested by</p> <p>6 VPC and there's just more documents of the</p> <p>7 same.</p> <p>8 BY MR. ACKELSBERG:</p> <p>9 Q. It looks like this started out with John</p> <p>10 Williams?</p> <p>11 A. I don't remember John Williams.</p> <p>12 Q. But you understood it had something to</p> <p>13 do with Victory Park?</p> <p>14 MR. HERMAN: Objection to</p> <p>15 form.</p> <p>16 THE WITNESS: I don't</p> <p>17 remember, but I clearly typed in VPCs</p> <p>18 attorney's reviewing the docs and asked for</p> <p>19 this. So that would have been my</p> <p>20 understanding.</p> <p>21 - - -</p> <p>22 (Whereupon Exhibit P-356 was marked for</p> <p>23 identification.)</p> <p>24 - - -</p>

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IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

COMMONWEALTH OF :
PENNSYLVANIA :
Plaintiff :
:
VS. : CIVIL ACTION NUMBER
: 2:14-CV-07139
THINK FINANCE, INC., :
ET AL., :
Defendants :
- - -
MAY 15, 2018
- - -

Videotaped deposition of TOM WELCH,
was taken pursuant to notice at 525 W. Monroe
Street, Chicago, Illinois, beginning at or
about 9:00 a.m. before Jeannine Cancelliere,
Court Reporter and Notary Public and Stephan
Hoog, Videotape Operator, there being present.

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Page 6	Page 8
<p>1 VIDEOTAPE OPERATOR: This is the</p> <p>2 beginning of media one in the deposition of</p> <p>3 Tom Welch in the matter of Commonwealth versus</p> <p>4 Think Finance, et al., case no. 14-7139-JCJ.</p> <p>5 Today's date is May 15th, 2018. The time is</p> <p>6 9:01 a m., as indicated on the video screen.</p> <p>7 My name is Stephan Hoog. I'm the</p> <p>8 videographer. The court reporter is Jeannine</p> <p>9 Cancelliere. Will counsel please introduce</p> <p>10 themselves for the record, followed by the</p> <p>11 swearing in of the witness.</p> <p>12 MR. GROGAN: John Grogan for the</p> <p>13 Commonwealth.</p> <p>14 MR. SHAPIRO: Dan Shapiro for</p> <p>15 the Victory Park defendants.</p> <p>16 MR. HAWS: Matthew Haws with</p> <p>17 Victory Park defendants.</p> <p>18 MR. GATEWOOD: Matthew Gatewood</p> <p>19 for the Think Finance defendants.</p> <p>20 MR. BOUGHRUM: Jonathan</p> <p>21 Boughrum for Ken Rees.</p> <p>22 MR. DAUGHERTY: Patrick</p> <p>23 Daugherty on behalf of National Credit</p> <p>24 Adjusters.</p>	<p>1 answer them unless you're instructed not to by</p> <p>2 your counsel. I will ask a question.</p> <p>3 Undoubtedly, counsel, either Mr. Shapiro or</p> <p>4 the others will interpose objections sometimes</p> <p>5 to the form of that question. But in the</p> <p>6 normal course, unless you're instructed not to</p> <p>7 answer, you're going to answer the question</p> <p>8 despite the objection. Okay.</p> <p>9 You're free to consult with</p> <p>10 your attorneys at any time, but I would ask</p> <p>11 you to answer any pending question before you</p> <p>12 do that. Similarly, with regard to breaks, it</p> <p>13 is not an endurance test. We'll be taking</p> <p>14 breaks at regular times, but if you need a</p> <p>15 break for any reason, please just let me know</p> <p>16 and we'll stop. Again, I would ask you to</p> <p>17 answer pending questions.</p> <p>18 A. Sure.</p> <p>19 Q. If you answer my question without asking</p> <p>20 for clarification, I'll assume you understood</p> <p>21 it. We're trying to keep a clean record. The</p> <p>22 official record is being kept by</p> <p>23 Ms. Cancelliere here. It's a typewritten</p> <p>24 record. It's also being videotaped, but the</p>

<p style="text-align: right;">Page 69</p> <p>1 MR. SHAPIRO: Same objection.</p> <p>2 THE WITNESS: Yes, that is my</p> <p>3 understanding.</p> <p>4 BY MR. GROGAN:</p> <p>5 Q. Okay. Did anybody that you're aware of</p> <p>6 at First Bank of Delaware review the 2008</p> <p>7 cease and desist order before this investment</p> <p>8 was made?</p> <p>9 MR. SHAPIRO: Objection,</p> <p>10 form.</p> <p>11 BY MR. GROGAN:</p> <p>12 Q. I mean the February 28, 2011,</p> <p>13 investment.</p> <p>14 MR. SHAPIRO: Can you read</p> <p>15 that -- I'm sorry. You said the First Bank of</p> <p>16 Delaware.</p> <p>17 MR. GROGAN: I'm sorry.</p> <p>18 BY MR. GROGAN:</p> <p>19 Q. Did anybody at Victory Park read the</p> <p>20 2008 cease and desist order issued by the FDIC</p> <p>21 to the First Bank of Delaware prior to making</p> <p>22 this investment?</p> <p>23 MR. SHAPIRO: Objection,</p> <p>24 form.</p>	<p style="text-align: right;">Page 71</p> <p>1 product?</p> <p>2 A. Not to my knowledge.</p> <p>3 Q. If you look at recommendation under --</p> <p>4 on page three. It's slightly -- the syntax is</p> <p>5 odd but Think -- second sentence: Think</p> <p>6 Finance will investment 16 million into GPL</p> <p>7 Servicing on the closing date to allow VPC to</p> <p>8 exchange 47.7 million of ThinkCash loan</p> <p>9 participations for 51 and change of ThinkCash</p> <p>10 loans.</p> <p>11 My question is -- and you may</p> <p>12 not know -- but what is the relationship</p> <p>13 between a Think Finance investment of</p> <p>14 16 million and allowing VPC to exchange its</p> <p>15 shares valued at 47 million for the</p> <p>16 participation valued at 51 million?</p> <p>17 A. I'll be honest. I'm not exactly sure.</p> <p>18 I agree it's an oddly worded phrase. I don't</p> <p>19 know exactly what he's trying to articulate</p> <p>20 from a mechanic standpoint.</p> <p>21 Q. Is it fair to say, then, that at least</p> <p>22 at this point, Think Finance became, itself,</p> <p>23 an investor in GPLS?</p> <p>24 MR. SHAPIRO: Objection,</p>
<p style="text-align: right;">Page 70</p> <p>1 THE WITNESS: I don't know.</p> <p>2 BY MR. GROGAN:</p> <p>3 Q. Were you familiar in your work at VPC</p> <p>4 with a product called Cash Call?</p> <p>5 A. Yes.</p> <p>6 Q. Okay. Do you view the statement at the</p> <p>7 end of the final paragraph on page two: The</p> <p>8 proposed tribal lending structure is</p> <p>9 substantially similar to the business used by</p> <p>10 Cash Call for over nine months, Think</p> <p>11 Finance's main competitor.</p> <p>12 Do you agree with that</p> <p>13 statement?</p> <p>14 MR. SHAPIRO: Objection,</p> <p>15 foundation.</p> <p>16 MR. GATEWOOD: Objection.</p> <p>17 MR. SHAPIRO: And form. Go</p> <p>18 ahead.</p> <p>19 THE WITNESS: Given that it's</p> <p>20 substantially similar, I would agree with</p> <p>21 that.</p> <p>22 BY MR. GROGAN:</p> <p>23 Q. Okay. Do you know if VPC had any</p> <p>24 relationship with Cash Call or the Cash Call</p>	<p style="text-align: right;">Page 72</p> <p>1 form.</p> <p>2 THE WITNESS: Yes. Based on</p> <p>3 Think Finance will invest 16 million into</p> <p>4 GPLS.</p> <p>5 BY MR. GROGAN:</p> <p>6 Q. Okay. And that was true for much of the</p> <p>7 life of the GPLS investment, that Think</p> <p>8 Finance itself had an investment in GPLS?</p> <p>9 A. That's correct.</p> <p>10 Q. Okay. Prior to this deal in February</p> <p>11 2011, do you know if Think Finance was</p> <p>12 invested in the loan participations that were</p> <p>13 purchased by -- the loan participations</p> <p>14 purchased from First Bank of Delaware?</p> <p>15 MR. SHAPIRO: Objection,</p> <p>16 form.</p> <p>17 THE WITNESS: I don't know.</p> <p>18 BY MR. GROGAN:</p> <p>19 Q. OKAY. Now, in the transaction overview</p> <p>20 section --</p> <p>21 MR. SHAPIRO: So you're back</p> <p>22 on page four?</p> <p>23 MR. GROGAN: And five.</p> <p>24 BY MR. GROGAN:</p>

<p style="text-align: right;">Page 73</p> <p>1 Q. Well, maybe this answers this. Maybe it 2 doesn't. Who are the funds that are going to 3 invest in this iteration of funding for GPLS? 4 MR. SHAPIRO: You're asking 5 him to interpret the document as opposed to -- 6 MR. GROGAN: If he knows, he 7 can just answer or interpret the document, if 8 you need to. 9 THE WITNESS: Based on the 10 document and the bullet below labeled 11 investors, similar references, Victory Park 12 credit opportunities master fund and VPC Fund 13 II. 14 BY MR. GROGAN: 15 Q. Are these the same funds that were 16 involved in the July 10th memo or different? 17 A. I need to reference. 18 Q. Sure. Go ahead. 19 A. These are the same Victory Park funds. 20 Q. Okay. Again, I want to draw your 21 attention to page 13, with similar language to 22 what we saw in the 2010 memo. There are 23 currently 15 states. Do you see that 24 language?</p>	<p style="text-align: right;">Page 75</p> <p>1 A. It varies. This is -- if I can put a 2 number of hours on it, I mean, it's 3 probably -- a given iteration, probably two 4 days of work to kind of proof and define and 5 term. 6 Q. You're listed as the author. Is there 7 somebody who vets it before it goes to the 8 investment committee, at this time? 9 A. No. This is -- this was just me. 10 Q. Okay. And this becomes the basis for a 11 discussion at the investment committee 12 meeting? 13 A. Correct. 14 Q. And I'll assume, but you can correct me 15 if I'm wrong, these are heavily scrutinized by 16 the investment committee members? 17 A. Correct. 18 Q. People ask hard questions? 19 A. Correct. 20 Q. Okay. Can you take a look at the gray 21 box and tell me what's going on in this 22 particular deal? 23 A. So Think had requested incremental 24 capital, given the growth of the tribal</p>
<p style="text-align: right;">Page 74</p> <p>1 A. Yes. 2 Q. Okay. Do you know, at the time that 3 this document was authored, whether Victory 4 Park -- any of the Victory Park funds was 5 buying participations in loans originated in 6 Pennsylvania? 7 A. I do not know. 8 Q. Okay. Good. We can move to the next 9 investment committee memorandum, which happily 10 you authored. 11 A. Here we go. 12 Q. So we can dispense with the Dean Smith 13 reading of the document for 20 minutes or so. 14 But I want you to take a look at this 15 document. Make yourself comfortable so you 16 can answer questions about it. 17 A. Okay. 18 Q. Okay. You're the author of this 19 document? 20 A. Yes. 21 Q. And I just want to ask sort of a 22 preparatory question. The document strikes me 23 as very detailed. How long does it take to 24 draft one of these, to get it ready to submit?</p>	<p style="text-align: right;">Page 76</p> <p>1 program. So in effect, this is going to 2 committee, requesting to increase the size of 3 the existing transaction. 4 Q. And how much is the increase? 5 A. An additional 150 million. 6 Q. So doubling the size of the investment; 7 is that correct? 8 A. That is correct. 9 Q. And the purpose is that that business is 10 good; is that correct? 11 A. Correct. 12 Q. Okay. And at this time, by October 15, 13 2012 -- strike that. 14 The previous memo had 15 referenced only one tribal lender, Plain 16 Green; is that correct? 17 A. That's correct. 18 Q. Okay. How many tribal lenders were 19 involved by October 15, 2012? 20 A. There were three tribal lenders 21 involved. 22 Q. Okay. Would they be the Plain Green, 23 Mobiloans and Great Plains? 24 A. That's correct.</p>

<p style="text-align: right;">Page 77</p> <p>1 Q. Okay. And in preparation of this</p> <p>2 document, did you visit any of those tribal</p> <p>3 lenders?</p> <p>4 A. I did not.</p> <p>5 Q. Did you speak to anybody at the tribal</p> <p>6 lenders?</p> <p>7 A. Not to my recollection.</p> <p>8 Q. Okay. So to the extent that you have</p> <p>9 information in this document about tribal</p> <p>10 lenders, where did you get that information?</p> <p>11 A. Think Finance.</p> <p>12 Q. This is an amendment or an expansion</p> <p>13 Series I facility, which -- is it fair to say</p> <p>14 the Series I facility is both the July 28th,</p> <p>15 2010 investment and the 2011 investment we</p> <p>16 covered? Would they both comprise Series I?</p> <p>17 A. I would think of Series I as just the</p> <p>18 second -- the non --</p> <p>19 Q. The 2011?</p> <p>20 A. The 2011, correct.</p> <p>21 Q. Okay.</p> <p>22 A. The February 2011.</p> <p>23 Q. And what was the rate of return</p> <p>24 anticipated in the Series I investments?</p>	<p style="text-align: right;">Page 79</p> <p>1 limited partners in the two facilities?</p> <p>2 MR. SHAPIRO: If you know.</p> <p>3 BY MR. GROGAN:</p> <p>4 Q. I'm sorry. You can strike that.</p> <p>5 You have co-investors coming</p> <p>6 in at this point; is that correct?</p> <p>7 A. That's correct.</p> <p>8 Q. The rate of return the co-investors are</p> <p>9 entitled to is different than the Victory Park</p> <p>10 return; isn't that correct?</p> <p>11 A. To my recollection, that's correct.</p> <p>12 Q. Okay. What is the difference? Do you</p> <p>13 recall the numbers?</p> <p>14 A. I believe at this point, any</p> <p>15 co-investors were paying Victory Park a</p> <p>16 management fee of two percent. So their net</p> <p>17 would be 18 percent off the 20.</p> <p>18 Q. I see. And that's the sole reason for</p> <p>19 the difference?</p> <p>20 A. Correct.</p> <p>21 Q. And that's paid to Victory Park Capital</p> <p>22 Advisors?</p> <p>23 A. I don't know specifically which Victory</p> <p>24 Park entity that goes to.</p>
<p style="text-align: right;">Page 78</p> <p>1 A. 20 percent annualized return.</p> <p>2 Q. And what was the rate?</p> <p>3 MR. SHAPIRO: You're talking</p> <p>4 about for Victory Park?</p> <p>5 MR. GROGAN: For Victory</p> <p>6 Park.</p> <p>7 BY MR. GROGAN:</p> <p>8 Q. And what is the rate for the Series II</p> <p>9 investments?</p> <p>10 MR. SHAPIRO: Same -- let</p> <p>11 me --</p> <p>12 BY MR. GROGAN:</p> <p>13 Q. For Victory Park. For Victory Park</p> <p>14 funds.</p> <p>15 A. Sorry. Can you repeat the question?</p> <p>16 Q. Well, I think the answer is the same.</p> <p>17 If you look at the bottom of the gray box, VPC</p> <p>18 is still expecting to earn a 20 percent</p> <p>19 annualized return on the Series II money; is</p> <p>20 that correct?</p> <p>21 A. Victory Park is still expecting a</p> <p>22 20 percent annualized return.</p> <p>23 Q. Okay. Is there is difference between</p> <p>24 the return promised to limited investors -- or</p>	<p style="text-align: right;">Page 80</p> <p>1 Q. Okay. If you look at page three,</p> <p>2 current investors entitled to a 20 percent</p> <p>3 fixed return. It's seems like -- I'm looking</p> <p>4 at the graph.</p> <p>5 A. Yep.</p> <p>6 Q. And then there's Class A and Class B</p> <p>7 investors?</p> <p>8 A. Correct.</p> <p>9 Q. And then the Class C and Class D are</p> <p>10 characterized as new investors.</p> <p>11 Are they the co-investors</p> <p>12 that we're talking about?</p> <p>13 A. From my recollection, there were still</p> <p>14 co-investors in Class A and Class B at the 20</p> <p>15 net 18 we discussed. New investors would be</p> <p>16 for Class C and D, which I believe you refer</p> <p>17 to as Series II. And that would be at the 18</p> <p>18 percent return.</p> <p>19 Q. With a one percent --</p> <p>20 A. With a one percent VPC Series II fee.</p> <p>21 Q. Is that the same as a management fee?</p> <p>22 A. Correct.</p> <p>23 Q. Why the difference in return for the new</p> <p>24 investors? If you recall.</p>

<p style="text-align: right;">Page 97</p> <p>1 Finance.</p> <p>2 BY MR. GROGAN:</p> <p>3 Q. Did VPC play a role in that decision,</p> <p>4 those decisions?</p> <p>5 A. No.</p> <p>6 Q. Okay. Now they're also referencing on</p> <p>7 the third bullet point down: October 31st,</p> <p>8 the first paydown was received totaling 22.3</p> <p>9 million of which 17.6 million was used to</p> <p>10 retire VPC's Series I-A shares and 4.7 million</p> <p>11 was returned to co-investors holding Series</p> <p>12 I-A shares.</p> <p>13 What's happening there?</p> <p>14 A. Investors into GPLS are getting their</p> <p>15 principal capital returned to them.</p> <p>16 Q. People are exiting the investment?</p> <p>17 A. Correct.</p> <p>18 Q. And is this a period -- well, the title</p> <p>19 of the section is the GPLS Partial Wind-Down.</p> <p>20 Was a decision made at that point to partially</p> <p>21 wind-down the investment in GPLS?</p> <p>22 A. Could you be more specific?</p> <p>23 Q. Not really. Well, I mean --</p> <p>24 MR. SHAPIRO: Let him ask the</p>	<p style="text-align: right;">Page 99</p> <p>1 read back the pending question.)</p> <p>2 - - -</p> <p>3 MR. SHAPIRO: Objection,</p> <p>4 foundation. It presumes --</p> <p>5 BY MR. GROGAN:</p> <p>6 Q. Did you discuss this decision to wind</p> <p>7 down with anyone at Great Plains?</p> <p>8 A. Most of my communications throughout</p> <p>9 this time was with Think Finance. I do recall</p> <p>10 having some discussions, maybe just a -- one</p> <p>11 phone call or two. I can't recall exactly</p> <p>12 with which tribe. I do remember speaking to</p> <p>13 some individuals at either Plain Green or</p> <p>14 Great Plains or Mobiloans or all of the above</p> <p>15 collectively at some point around this time.</p> <p>16 Q. About the partial wind-down?</p> <p>17 A. Correct.</p> <p>18 Q. Okay. You don't recall the name of that</p> <p>19 person, and you don't recall which tribe?</p> <p>20 A. Correct.</p> <p>21 Q. It says at the bottom of page two, in</p> <p>22 the paragraph that begins: VPC's investment</p> <p>23 vehicle for the Rise facility will not</p> <p>24 formally close until mid-January.</p>
<p style="text-align: right;">Page 98</p> <p>1 question.</p> <p>2 THE WITNESS: Go ahead.</p> <p>3 BY MR. GROGAN:</p> <p>4 Q. I am racked into the title that was</p> <p>5 chosen in the document. All right? Rise</p> <p>6 Expansion and GPLS Partial Wind-Down.</p> <p>7 Who decided to engage in a</p> <p>8 GPLS partial wind-down?</p> <p>9 A. I think, collectively, all parties</p> <p>10 involved. In effect, you have Think, along</p> <p>11 with the tribes, dialing down origination.</p> <p>12 Therefore, there's a lot of excess cash coming</p> <p>13 back in, and we agreed to -- with that excess</p> <p>14 cash, started to get partially repaid.</p> <p>15 Q. Okay. And that would be prepayments,</p> <p>16 though, right? You're paying this back to</p> <p>17 investors earlier than you had anticipated?</p> <p>18 A. Correct.</p> <p>19 Q. Okay. Now, who at Great Plains did you</p> <p>20 discuss this decision to wind down GPLS?</p> <p>21 MR. SHAPIRO: Could you read</p> <p>22 that back please?</p> <p>23 - - -</p> <p>24 (Whereupon the court reporter</p>	<p style="text-align: right;">Page 100</p> <p>1 And my question is, does that</p> <p>2 mean that no funding for the Rise facility can</p> <p>3 be dispersed until mid-January?</p> <p>4 MR. SHAPIRO: Well, go ahead</p> <p>5 and read the rest of it.</p> <p>6 BY MR. GROGAN:</p> <p>7 Q. Read as much as you need to.</p> <p>8 A. Okay. What's the question?</p> <p>9 Q. First question is, with regards to just</p> <p>10 the first sentence, does that mean that the</p> <p>11 money to be raised in this new Rise facility,</p> <p>12 the facility will not close until mid-January,</p> <p>13 correct? That's what that says?</p> <p>14 A. Correct.</p> <p>15 Q. Does that mean that no money can be</p> <p>16 dispersed to the Rise product for lending</p> <p>17 until mid-January?</p> <p>18 A. Correct. To my recollection, we didn't</p> <p>19 close our Rise facility -- "we" meaning</p> <p>20 Victory Park -- until January.</p> <p>21 Q. And you don't give money to the borrower</p> <p>22 until the facility closes?</p> <p>23 A. Correct.</p> <p>24 Q. Okay. And then it says: As such, VPC</p>

<p style="text-align: right;">Page 101</p> <p>1 will allow Think to gross sweep, in quotes, 2 its November Administrative fee from GPLS, 3 i.e. not require the past due loans to be 4 repurchased, and use the proceeds to 5 temporarily fund Rise. 6 Did I read that correctly? 7 A. You did. 8 Q. What is a gross sweep? 9 A. So as it relates to GPLS, each month, 10 when you look at the income statement for that 11 entity, in effect, what the residual was 12 pursuant to the administrative agency 13 agreement, Think Finance had a right to that 14 amount. 15 Q. Correct. 16 A. Now, another stipulation that Think had 17 at GPLS is that on a monthly basis, it would 18 reimburse GPLS for any loans it charged off. 19 Q. Okay. 20 A. So you can think about it as if the 21 administrative agency fee was ten and there 22 was five charged-off loans, they would really 23 only sweep five, in effect. Right? 24 Q. Right.</p>	<p style="text-align: right;">Page 103</p> <p>1 Q. Okay. Do you know if Think did, in 2 fact, true up those gross sweeps? 3 A. To my knowledge, they did. 4 Q. Did you ever do gross sweeps in any 5 other period of time? 6 A. We may have. It wasn't uncommon. 7 Sometimes it would go the other way, where 8 they were actually leaving capital month to 9 month. 10 Q. Okay. 11 A. More of a capital management lever to 12 pull. 13 Q. Now, I also -- I'm sorry I don't do 14 these things in order. But if you look at the 15 paragraph or the sentences before that: 16 Management expects to rapidly grow the Rise 17 portfolio follow over the next 12 months. 18 Management there being Think 19 Finance management? 20 A. Correct. 21 Q. Okay. At close, assuming January 31st, 22 Rise is expected to have approximately 23 67 million of loans outstanding. Okay. 24 Demand for former tribal lending customers and</p>
<p style="text-align: right;">Page 102</p> <p>1 A. So what we were saying here is that for 2 November, they can actually sweep the full ten 3 and true up that five later. 4 Q. Later on? Essentially, though -- 5 A. So Think Finance would have a payable to 6 GPLS. 7 Q. So essentially, you're making a further 8 short-term loan to Think Finance? 9 A. I don't know if I would characterize it 10 as a loan. They would have -- there was no 11 loan document. There was no interest rate on 12 it. It was simply -- from an accounts payable 13 perspective, Think Finance would ultimately 14 have to reimburse the charged-off -- 15 Q. You weren't giving it to them; you 16 expected it back? 17 A. Correct. 18 Q. But why would you do that? 19 A. From a cash-timing perspective, Think 20 Finance could deploy that cash into the Rise 21 product but prior to closing their facility in 22 January. 23 Q. But that's GPLS cash? 24 A. Correct.</p>	<p style="text-align: right;">Page 104</p> <p>1 a new national marketing campaign are 2 forecasted to drive portfolio growth to over 3 160 million by year-end 2014. 4 My question is, whose 5 portfolio growth? Would that be portfolio 6 growth of Rise? 7 A. Yes. 8 Q. So the anticipation would be that former 9 customers who had gotten loans from the tribal 10 lending entities would now become customers of 11 Rise; is that correct? 12 MR. SHAPIRO: Object to form. 13 THE WITNESS: One more time? 14 Sorry, John. 15 BY MR. GROGAN: 16 Q. Sure. As I read that, it seems to be 17 saying that the former customers of the tribal 18 lending entities -- that's Mobiloans, Great 19 Plain and Plain Green -- their former 20 customers would now drive the portfolio growth 21 of the Rise product. They'd become customers 22 of Rise; is that correct? 23 MR. SHAPIRO: Object to form. 24 THE WITNESS: It's possible</p>

<p style="text-align: right;">Page 105</p> <p>1 former tribal lending customers could become 2 Rise -- borrowers under the Rise product, yes. 3 BY MR. GROGAN: 4 Q. Well, but it's not only possible. 5 I mean, this is part of the due diligence as 6 to why the Rise investment is going to make 7 sense, right? The market's going to be 160 8 million by the end of 2014. 9 MR. GATEWOOD: Objection to 10 form. 11 BY MR. GROGAN: 12 Q. Correct? Why else would that 13 information be in this document? This is a 14 document to vet an investment in Rise. 15 MR. GATEWOOD: Objection, 16 form. 17 THE WITNESS: Again, I accept 18 that I wrote demand from former tribal lending 19 customers and a new national marketing 20 campaign are forecasted to drive portfolio 21 growth to over 160 million by year-end 2014. 22 BY MR. GROGAN: 23 Q. Yeah. And then who was going to embark 24 on the new national marketing campaign?</p>	<p style="text-align: right;">Page 107</p> <p>1 voluntary bankruptcy and certain other lender 2 protections that we held. 3 Q. On whose books would the Rise SPV show 4 up, Think Finance's or VPC's? 5 A. Think Finance's. 6 Q. And that was true with GPLS too, right? 7 A. That's correct. 8 Q. And if you look at excess cash 9 provision -- and I must confess this took me 10 awhile to get. Generally speaking, unused 11 cash is a problem for Think Finance; is that 12 correct? 13 MR. GATEWOOD: Objection to 14 form. 15 BY MR. GROGAN: 16 Q. Either in GPLS or in the Rise SPV? 17 MR. GATEWOOD: Same 18 objection. 19 BY MR. GROGAN: 20 Q. They've agreed to repay at a certain 21 rate to Victory Park, correct? 22 A. Correct. 23 Q. On the expectation that they'll put that 24 cash to use by -- in the purchase of</p>
<p style="text-align: right;">Page 106</p> <p>1 A. Think Finance. 2 Q. Yeah. To drive formal tribal customers 3 into the Rise product; isn't that correct? 4 MR. SHAPIRO: Objection to 5 form, foundation. Go ahead. 6 THE WITNESS: Presumably, 7 they would be marketing to some former tribal 8 lending customers. 9 BY MR. GROGAN: 10 Q. Okay. If you look on page five under 11 the transactional overview, at the very top, 12 it says borrower. The borrower would be the 13 Rise SBP? 14 A. SPV. 15 Q. SPV. A single-member Delaware limited 16 liability company owned by Think, but 17 controlled by VPC. 18 How does VPC control 19 Rise SPV? 20 A. So from memory, we had certain -- and 21 control was probably a poor choice on my part 22 in authoring this sentence. But we had 23 certain controls as being one of the directors 24 in that LLC, to prevent that entity from a</p>	<p style="text-align: right;">Page 108</p> <p>1 participations and loan activities? 2 MR. GATEWOOD: Same 3 objection. 4 THE WITNESS: That's correct. 5 BY MR. GROGAN: 6 Q. So if there's cash they can't deploy, 7 they're paying a fairly steep rate for that 8 cash they can't use; is that correct? 9 MR. GATEWOOD: Objection, 10 form. 11 THE WITNESS: Correct. 12 BY MR. GROGAN: 13 Q. Okay. And so this excess cash 14 provision, what is this doing? Is that 15 attempting to address that problem that Think 16 Finance would have? 17 MR. SHAPIRO: Objection, 18 form. 19 THE WITNESS: Let me just 20 give it a quick review. 21 BY MR. GROGAN: 22 Q. Sure. 23 A. Okay. So what's your question on this 24 again?</p>

<p style="text-align: right;">Page 141</p> <p>1 twelve.</p> <p>2 MR. GROGAN: I have some</p> <p>3 general questions about co-investors that I</p> <p>4 think I can do in ten minutes or so, and then</p> <p>5 we can do lunch.</p> <p>6 MR. SHAPIRO: That's fine.</p> <p>7 BY MR. GROGAN:</p> <p>8 Q. Generally speaking, what's the</p> <p>9 relationship that exists between VPCA and the</p> <p>10 co-investors who invested in GPLS?</p> <p>11 MR. SHAPIRO: You're talking</p> <p>12 about legal relationship or what?</p> <p>13 BY MR. GROGAN:</p> <p>14 Q. Let's start with a financial</p> <p>15 relationship. Do co-investors owe VPCA any</p> <p>16 money for their participation in GPLS?</p> <p>17 A. Victory Park -- again, I don't know</p> <p>18 specifically what Victory Park entity. But if</p> <p>19 we can look at Victory Park as an asset</p> <p>20 manager, they did charge a management fee on</p> <p>21 co-invest dollars.</p> <p>22 Q. Okay. But there is no general partner</p> <p>23 entity with a co-investor, a VPC general</p> <p>24 partner entity with a co-investor, correct?</p>	<p style="text-align: right;">Page 143</p> <p>1 co-investors who are not LPs?</p> <p>2 A. Okay.</p> <p>3 Q. Okay. I'm sorry. We're interested in</p> <p>4 both. They would all be on the share</p> <p>5 register?</p> <p>6 A. Yes.</p> <p>7 Q. Okay. Were there any covenants or other</p> <p>8 financial terms imposed on co-investors by</p> <p>9 GPLS as a condition of entering -- becoming an</p> <p>10 investor?</p> <p>11 A. I don't believe there were any covenants</p> <p>12 imposed. I know there were thresholds in</p> <p>13 terms of being a credit investor, et cetera.</p> <p>14 And you can read it in their stock purchase</p> <p>15 agreement.</p> <p>16 Q. Okay.</p> <p>17 A. But I don't believe there were any other</p> <p>18 covenants that we imposed on co-investors, no.</p> <p>19 Q. And were there any terms that limited</p> <p>20 the liquidity of the co-investors investment?</p> <p>21 MR. SHAPIRO: Objection to</p> <p>22 form. To the extent these call for legal</p> <p>23 conclusions, I object to the question. But go</p> <p>24 ahead. As a matter of fact, testify to what</p>
<p style="text-align: right;">Page 142</p> <p>1 A. Are you asking if any co-investors were</p> <p>2 involved with any of the GPs?</p> <p>3 Q. No. I'm asking the other way around.</p> <p>4 There was no VPC general partner established</p> <p>5 to interact with a co-investor?</p> <p>6 A. No.</p> <p>7 Q. The interaction is done with VPCA?</p> <p>8 A. Correct.</p> <p>9 Q. Okay. Other than [REDACTED] and [REDACTED] did</p> <p>10 VPC solicit other co-investors for the GPLS</p> <p>11 investment?</p> <p>12 MR. SHAPIRO: At any point?</p> <p>13 BY MR. GROGAN:</p> <p>14 Q. At any point.</p> <p>15 A. Yes.</p> <p>16 Q. Who?</p> <p>17 A. There were a host of co-investors</p> <p>18 throughout the life of this deal. Some of</p> <p>19 those early co-investors, we call them</p> <p>20 co-investors, because there were also LPs</p> <p>21 directly in some of our funds.</p> <p>22 Q. Okay.</p> <p>23 A. Or relations --</p> <p>24 Q. I'm interested in, I think, in</p>	<p style="text-align: right;">Page 144</p> <p>1 you know.</p> <p>2 THE WITNESS: So an investor</p> <p>3 was beholden to the term of that investment.</p> <p>4 There was no unilateral right for that</p> <p>5 co-investor to redeem out, like a hedge fund</p> <p>6 or anything.</p> <p>7 Q. Okay. All right.</p> <p>8 MR. GROGAN: I think that's</p> <p>9 all I have on that. I think this is a good</p> <p>10 time to break.</p> <p>11 THE VIDEOTAPE OPERATOR: Off</p> <p>12 the record at 12:09 p.m.</p> <p>13 Back on the record at 12:49</p> <p>14 p m.</p> <p>15 BY MR. GROGAN:</p> <p>16 Q. Good afternoon, Mr. Welch. We are</p> <p>17 beginning our second portion and we're halfway</p> <p>18 there. So I appreciate your patience and your</p> <p>19 attention. I want to shift gears a little</p> <p>20 bit. I think you have already testified to</p> <p>21 this, but I'm going to ask you again. Was VPC</p> <p>22 the only entity arranging funding for GPLS at</p> <p>23 any time in the period that we're discussing?</p> <p>24 MR. SHAPIRO: Objection,</p>

<p style="text-align: right;">Page 145</p> <p>1 form.</p> <p>2 THE WITNESS: Yes, we were</p> <p>3 the only institution managing kind of our</p> <p>4 investment, our loan participations in</p> <p>5 everything. But there were co-investors that</p> <p>6 were referred in from third parties or Think</p> <p>7 executives, et cetera.</p> <p>8 BY MR. GROGAN:</p> <p>9 Q. Okay. Is the same true for Elevate, the</p> <p>10 Rise and Elevate facilities? Was Victory Park</p> <p>11 the only institution entity arranging funding</p> <p>12 for those products?</p> <p>13 MR. SHAPIRO: Same objection.</p> <p>14 THE WITNESS: So, similar</p> <p>15 answer, yes. We are their agent and provide</p> <p>16 the bulk of their capital. As we sit here</p> <p>17 today, there are other institutions that have</p> <p>18 come into our facility.</p> <p>19 BY MR. GROGAN:</p> <p>20 Q. I see. When did they come in?</p> <p>21 A. At close there were a few co-investors</p> <p>22 that funded few dollars at close. And then</p> <p>23 recently we amended our facility, I believe it</p> <p>24 was a year ago. And there are a few other</p>	<p style="text-align: right;">Page 147</p> <p>1 MR. SHAPIRO: I'm confused by</p> <p>2 that.</p> <p>3 THE WITNESS: Are you asking</p> <p>4 if they sold any other --</p> <p>5 BY MR. GROGAN:</p> <p>6 Q. Yeah. Did anybody else buy</p> <p>7 participations, other than GPLS?</p> <p>8 A. Not to my knowledge, no.</p> <p>9 MR. SHAPIRO: Objection to</p> <p>10 form.</p> <p>11 BY MR. GROGAN:</p> <p>12 Q. So even to the extent that there were</p> <p>13 friends and family investors, they were still</p> <p>14 invested in GPLS; and GPLS was the vehicle for</p> <p>15 the purchase of the participations?</p> <p>16 A. Correct.</p> <p>17 Q. Nobody else was buying participations</p> <p>18 outside of GPLS?</p> <p>19 A. Not to my knowledge.</p> <p>20 Q. And GPLS was not obligated to buy</p> <p>21 shares; is that correct?</p> <p>22 MR. SHAPIRO: Participations?</p> <p>23 BY MR. GROGAN:</p> <p>24 Q. Participations.</p>
<p style="text-align: right;">Page 146</p> <p>1 institutions that participated and took pieces</p> <p>2 of the up-sized commitments in the Rise</p> <p>3 facility.</p> <p>4 Q. And that's solely Rise, not GPLS?</p> <p>5 A. Correct, I am just speaking to Rise.</p> <p>6 Q. Were there any co-investors in Rise --</p> <p>7 strike that.</p> <p>8 I think -- strike that.</p> <p>9 Now what percentage of loan</p> <p>10 participations were purchased by GPLS?</p> <p>11 A. It varied over time and by tribe. At</p> <p>12 the outset it was a 99 percent economic</p> <p>13 participation interest. Over time as the</p> <p>14 tribes had more capital to devote to the</p> <p>15 program, their one percent increased from</p> <p>16 there. So in certain instances it was five,</p> <p>17 it may have even got to ten by Plain Green.</p> <p>18 Q. I should have asked a more -- your</p> <p>19 answer was the right answer to my question,</p> <p>20 but I didn't mean to ask that question.</p> <p>21 Of the total output of loans</p> <p>22 for which participations were sold by the</p> <p>23 tribal entities, what percentage of those</p> <p>24 participations did GPLS buy?</p>	<p style="text-align: right;">Page 148</p> <p>1 A. GPLS was not obligated to purchase</p> <p>2 participations, that's correct. It was at</p> <p>3 GPLS' option.</p> <p>4 Q. And it could stop whenever it wanted to?</p> <p>5 A. That's correct.</p> <p>6 MR. GROGAN: I want to show</p> <p>7 you a document, document A. This will be</p> <p>8 Plaintiff's --309, 310.</p> <p>9 - - -</p> <p>10 (Whereupon Exhibit P-310 was</p> <p>11 marked for identification.)</p> <p>12 - - -</p> <p>13 BY MR. GROGAN:</p> <p>14 Q. Take a look at this e-mail. And my</p> <p>15 question is, that this power that GPLS had to</p> <p>16 stop purchasing, that was an important power</p> <p>17 to some of your co-investors, including [REDACTED]</p> <p>18 wasn't it?</p> <p>19 MR. SHAPIRO: Objection,</p> <p>20 form, calls for speculation and foundation.</p> <p>21 Go ahead.</p> <p>22 BY MR. GROGAN:</p> <p>23 Q. Let's look at the e-mail. Who is Harsh</p> <p>24 Patel?</p>

<p style="text-align: right;">Page 149</p> <p>1 A. Harsh Patel worked at [REDACTED] 2 [REDACTED] 3 Q. Does he now work for VPC? 4 A. He does not. 5 Q. Did he ever work for VPC? 6 A. He did. 7 Q. When did he work for VPC? 8 A. It was after -- I don't remember the 9 exact dates. I think it was probably around 10 2014. He was with us for maybe a year, year 11 and a half. 12 Q. What's he doing now? 13 A. I'm not sure. I believe he works for a 14 venture capital fund in London. 15 Q. Do you see where he's writing to you at 16 the top of -- the middle sort of iteration of 17 the e-mail: Hey, I forgot to send you a note. 18 Our lawyer should be getting in touch with 19 yours to move towards closing the trade. One 20 thing that we did want to include in the terms 21 is the ability to stop GPLS from purchasing 22 new loans should an adverse bill, such as a 23 safe lending get a positive vote in the 24 senate. I believe that VPC have this ability</p>	<p style="text-align: right;">Page 151</p> <p>1 some sort of material adverse change or 2 adverse legislation in order to effectuate 3 that ability to stop purchasing. 4 Q. Okay, but I want to be a little more 5 specific because Mr. Patel's question is, I 6 believe that VPC have the ability -- this 7 ability already through its control of GPLS. 8 And you respond, I will double check the exact 9 language, but yes. 10 Are you saying yes to the 11 fact that VPC has the ability through its 12 control of GPLS? 13 A. To stop purchasing participations? 14 Q. Yes. 15 A. Yes. 16 Q. Thank you very much. And there, in 17 fact, came a time when VPC did, in fact, 18 determine to stop purchasing participations; 19 isn't that correct? 20 A. Yes. 21 MR. GROGAN: Let's get a 22 document on that as well, it will be document 23 B. This will be 311. 24 - - -</p>
<p style="text-align: right;">Page 150</p> <p>1 already through its control of GPLS -- 2 MR. SHAPIRO: Question mark. 3 BY MR. GROGAN: 4 Q. Question mark. And you reply: I'll 5 double check the exact language, but yes, we 6 have the ability to turn off the program to 7 the extent there is a market MAC, such as 8 adverse legislation that ultimately turns into 9 law. Do you recall that exchange? 10 A. Not from memory, but... 11 Q. Do you have any reason to doubt that 12 this is an authentic -- 13 A. No. 14 Q. Okay. What is a MAC? 15 A. A MAC is a material adverse change. 16 Q. Is it your recollection that you -- VPC 17 had the ability to turn off the program, that 18 is to stop purchasing participations and to 19 the extent -- in the event that there was a 20 market MAC? 21 A. I may have misspoke here or there may 22 have been more context after this, but GPLS 23 has the evergreen right not the obligation to 24 purchase. It's not so that there needs to be</p>	<p style="text-align: right;">Page 152</p> <p>1 (Whereupon Exhibit P-311 was 2 marked for identification.) 3 - - - 4 BY MR. GROGAN: 5 Q. Take a look at that e-mail. I apologize 6 for the insanely small type. 7 A. Okay. 8 Q. Do you recall this e-mail? 9 A. I do. 10 Q. The bottom e-mail is from you to Ken 11 Rees and Chris Lutes? Who is Ken Rees? 12 A. Ken Rees was, at that time, the CEO of 13 Think Finance. 14 Q. Who was Chris Lutes? 15 A. The CFO. 16 Q. The cc to Richard Levy, and Richard Levy 17 is a partner at Victory Park Capital? 18 A. Correct. 19 Q. You write: I wanted to give you both a 20 quick heads up that we will be sending over a 21 formal letter to document our current 22 situation regarding GPLS and the halting of 23 all participation interest purchases for the 24 time being, as we have discussed. Please let</p>

<p style="text-align: right;">Page 153</p> <p>1 me know if you have any issues once you've</p> <p>2 received it. Appreciate your working with us</p> <p>3 here.</p> <p>4 You had a previous discussion</p> <p>5 with Mr. Rees and Mr. Lutes regarding this?</p> <p>6 A. Yes.</p> <p>7 Q. What was the nature of that discussion?</p> <p>8 A. Again, given this was back in August of</p> <p>9 2013, I don't recall the specific discussion.</p> <p>10 This was around the time, as we discussed</p> <p>11 earlier, a lot of things happening on the</p> <p>12 regulatory front in particular. As I</p> <p>13 remember, Operation Choke Point, when there</p> <p>14 was a perceived risk that the ability to</p> <p>15 access banking relationships and the ACH</p> <p>16 relationships could go away and potentially</p> <p>17 cause some risk to continue on with the</p> <p>18 program.</p> <p>19 Q. And things had gotten to a point where</p> <p>20 you thought it prudent not to make any</p> <p>21 participation purchases through GPLS?</p> <p>22 A. For that time being, yes.</p> <p>23 Q. Who did you have discussions with at VPC</p> <p>24 with regard to making that decision?</p>	<p style="text-align: right;">Page 155</p> <p>1 been done, there was an expectation that a</p> <p>2 certain percentage of those would want to</p> <p>3 ultimately take the loan that they were</p> <p>4 offered.</p> <p>5 Q. And they were asking you permission to</p> <p>6 have an exception to your ban on all purchases</p> <p>7 for those customers?</p> <p>8 MR. GATEWOOD: Objection,</p> <p>9 form.</p> <p>10 THE WITNESS: They were, in</p> <p>11 effect, asking if we could continue purchasing</p> <p>12 what was already pre-approved and just delay</p> <p>13 the ceasing of purchasing.</p> <p>14 BY MR. GROGAN:</p> <p>15 Q. Do you remember if you granted that</p> <p>16 permission?</p> <p>17 A. I don't recall the specifics of the</p> <p>18 exact timing or amounts.</p> <p>19 Q. Do you know if, at any point after</p> <p>20 August 20th, 2013, VPC approved the resumption</p> <p>21 of GPLS buying participations?</p> <p>22 A. We did.</p> <p>23 Q. I think we might see some documents</p> <p>24 about that. Can I have document D, please?</p>
<p style="text-align: right;">Page 154</p> <p>1 A. With Richard Levy.</p> <p>2 Q. Is it fair to say Mr. Levy would have</p> <p>3 the final say so?</p> <p>4 A. Yes.</p> <p>5 Q. Why would that be?</p> <p>6 A. He is the -- I don't know what his</p> <p>7 current title is now, founder of the firm. He</p> <p>8 owns the majority of VPCA. And at that time</p> <p>9 was the head investment.</p> <p>10 Q. It was Mr. Levy's decision to stop</p> <p>11 purchasing GPLS -- for GPLS to stop purchasing</p> <p>12 shares or participations at that time?</p> <p>13 A. My recollection, yes.</p> <p>14 Q. And then Mr. Lutes writes back to you a</p> <p>15 day later asking you about some pre-approved</p> <p>16 and direct mail campaigns. Do you recall what</p> <p>17 this was about?</p> <p>18 A. I do.</p> <p>19 Q. What is he asking here?</p> <p>20 A. In effect, they had already done some</p> <p>21 marketing for the tribes. In doing some of</p> <p>22 this marketing, they pre-approve would-be</p> <p>23 customers. And given those pieces of mail</p> <p>24 were already sent out, marketing had already</p>	<p style="text-align: right;">Page 156</p> <p>1 This will be 312.</p> <p>2 MR. SHAPIRO: Just for the</p> <p>3 record, as you're referring to -- it occurs to</p> <p>4 me that somebody is going to read this</p> <p>5 transcript, and they're going to see</p> <p>6 references to D and B. The only thing we're</p> <p>7 going by are the marked --</p> <p>8 MR. GROGAN: Correct, the</p> <p>9 letters are internal to me.</p> <p>10 MR. SHAPIRO: Okay.</p> <p>11 MR. GROGAN: Sorry. I'll do</p> <p>12 it sotto voce.</p> <p>13 MR. SHAPIRO: That's okay.</p> <p>14 - - -</p> <p>15 (Whereupon Exhibit P-312 was</p> <p>16 marked for identification.)</p> <p>17 - - -</p> <p>18 BY MR. GROGAN:</p> <p>19 Q. Let me know when you've taken a look at</p> <p>20 that.</p> <p>21 A. Okay.</p> <p>22 Q. Okay. So if we start, as I think we</p> <p>23 have to, at the bottom of the document 9317</p> <p>24 with Mr. Lutes writing to you: I talked with</p>

<p style="text-align: right;">Page 233</p> <p>1 budgets or just --</p> <p>2 BY MR. GROGAN:</p> <p>3 Q. Their budgets, their forecast. I assume</p> <p>4 you got board material that set out yearly</p> <p>5 budgets and yearly forecasts of what their</p> <p>6 lending would be. Did they ever undershoot</p> <p>7 their forecast?</p> <p>8 MR. GATEWOOD: Same</p> <p>9 objection.</p> <p>10 THE WITNESS: In terms of in</p> <p>11 2013 when they started to -- in tantum with</p> <p>12 the tribes and the -- I believe they were</p> <p>13 under forecast for that year. But I can't</p> <p>14 recall the specifics.</p> <p>15 MR. GROGAN: Okay, that's</p> <p>16 fine. Let's do FF, please. This will be 328.</p> <p>17 - - -</p> <p>18 (Whereupon Exhibit P-328 was</p> <p>19 marked for identification.)</p> <p>20 - - -</p> <p>21 BY MR. GROGAN:</p> <p>22 Q. I would ask you to orient yourself, this</p> <p>23 not a long document, but it is a little bit of</p> <p>24 a leap in logic and in time from what we've</p>	<p style="text-align: right;">Page 235</p> <p>1 Q. And our 75 million, do you recall what</p> <p>2 that 75 million refers to?</p> <p>3 A. It would have been VPC fund's dollars</p> <p>4 that were invested in GPLS.</p> <p>5 Q. Okay. And within context, with that</p> <p>6 understood then, he feels fine so long as he,</p> <p>7 this is Mr. Lutes; correct?</p> <p>8 A. Yes.</p> <p>9 Q. Has access to that capital, and that</p> <p>10 capital refers to 75 million, doesn't it?</p> <p>11 A. Let me give it one more read, given all</p> <p>12 of the prepositions and pronouns here.</p> <p>13 I'm not -- when I say that</p> <p>14 capital, I'm -- again, I'm speculating based</p> <p>15 on what my intent was from four years ago.</p> <p>16 But I think it all comes back to Mr. Lutes'</p> <p>17 surety that there's funding available for</p> <p>18 Rise.</p> <p>19 Q. Well, it's an important point because at</p> <p>20 least as it occurs to me, using the definite</p> <p>21 article "that", referring to 75 million, is</p> <p>22 that the capital that he has access to for</p> <p>23 Rise in fact GPLS capital. And that's what I</p> <p>24 want to get your opinion on.</p>
<p style="text-align: right;">Page 234</p> <p>1 been discussing. This is January 16th, 2014.</p> <p>2 A. Okay.</p> <p>3 Q. Let's start, for orientation purposes,</p> <p>4 at the bottom with your e-mail to Mr. Levy.</p> <p>5 Phil and I caught up with Lutes this afternoon</p> <p>6 and feel that we have him back on "our" page,</p> <p>7 related to GPLS and our 75 million. Still not</p> <p>8 entirely sure what they were missing when you</p> <p>9 spoke on Tuesday, but long/short is that he</p> <p>10 feels fine so long as he has access to that</p> <p>11 capital for Rise (which again has always been</p> <p>12 our deal) in the event of a full wind down of</p> <p>13 GPLS.</p> <p>14 I would ask you to comment on</p> <p>15 what you understand to be going on there.</p> <p>16 What were you telling Mr. Levy?</p> <p>17 A. Yeah, I don't recall specifically the</p> <p>18 nuances of quote, unquote, our page or how</p> <p>19 Rise related to a -- in the event of a full</p> <p>20 wind down of GPLS. From what I can recall, my</p> <p>21 discussion with Lutes was just around VPC</p> <p>22 providing capital full Rise, which was his --</p> <p>23 that seems to be was his main focus at that</p> <p>24 point in time.</p>	<p style="text-align: right;">Page 236</p> <p>1 A. Yeah, even if there was any -- let me</p> <p>2 try to articulate this. There would have been</p> <p>3 no way for GPLS to invest directly into Rise</p> <p>4 as a lender under the facility.</p> <p>5 Q. Uh-huh.</p> <p>6 A. So again, I'm not 100 percent certain on</p> <p>7 what that refers to in this context related to</p> <p>8 the 75 million.</p> <p>9 Q. Let me ask another question. Access to</p> <p>10 that capital for Rise, (which again has always</p> <p>11 been our deal) in the event of a full wind</p> <p>12 down of GPLS. So it seems to me, and I would</p> <p>13 ask for your opinion on this, that his access</p> <p>14 to that capital, the 75 million, would be for</p> <p>15 Rise, in the event that GPLS wound down. Does</p> <p>16 that make any sense?</p> <p>17 MR. GATEWOOD: Objection,</p> <p>18 form.</p> <p>19 THE WITNESS: The only thing</p> <p>20 I can think of here, and again, I just want to</p> <p>21 be clear for the record that I'm now</p> <p>22 speculating on the word that in this specific</p> <p>23 e-mail, is that that capital, if Rise were to</p> <p>24 have wound down, going back to the funds -- in</p>

<p style="text-align: right;">Page 237</p> <p>1 other words, that investments ending and being 2 redeployed as a new investment into Rise, from 3 my -- to the best of my knowledge from my 4 recollection. 5 BY MR. GROGAN: 6 Q. Is that understanding that you just 7 articulated, do you recall that has always 8 been your deal with Think Finance, as related 9 in the parenthetical? 10 MR. GATEWOOD: Objection, 11 form. 12 THE WITNESS: I can't recall 13 specifically what I mean by that 14 parenthetical. 15 BY MR. GROGAN: 16 Q. Okay. And then you say to Mr. Levy at 17 the top -- well, Mr. Levy says, good, let's 18 see if they hide behind their board. Do you 19 have any sense of what he meant by that? 20 A. I don't. 21 Q. Okay. And you write back to him: While 22 they might take one on the chin here, not much 23 they can do at this point. Rise doesn't 24 happen without GPLS' cooperation. What did</p>	<p style="text-align: right;">Page 239</p> <p>1 facility closed the end of January 2014. 2 Q. Correct. So almost contemporaneous with 3 this. 4 A. Correct. So GPLS would have to allow 5 that facility to have occurred. 6 Q. I am not understanding why. 7 A. Because at this point in time in January 8 of 2014, as part of the collateral package, 9 there was a blanket lien on all of Think's 10 assets. 11 Q. Right. 12 A. So as I stated earlier, part of those 13 assets were receivables based on their Rise 14 product, which was the non-tribal product. 15 Q. Right. 16 A. So in order to allow another lender, 17 which would have been another Victory Park 18 fund to finance the Rise product, that would 19 have needed to have been separated from GPLS 20 collateral. 21 Q. And presumably taking its own claim on 22 the Rise receivables, as security for the Rise 23 facility, correct? 24 A. New deal.</p>
<p style="text-align: right;">Page 238</p> <p>1 you mean by that? 2 A. If you look at the collateral package 3 for GPLS, of which Think Finance and their 4 assets were a guarantor, a portion of those 5 assets were the Rise receivables. So for GPLS 6 II, in effect, relinquish those, there would 7 need to be cooperation from GPLS II do that. 8 Q. GPLS would have to let its interest in 9 the Rise product as security for its 10 investment go, in order for the Rise product 11 to flower? 12 MR. GATEWOOD: Objection, 13 form. 14 BY MR. GROGAN: 15 Q. I'm just trying to understand what you 16 said. 17 A. So from my recollection, given the 18 collateral package and given the timing of 19 when we did the Rise facility -- 20 Q. Right, just for clarification purposes, 21 is about a month before, right? December -- 22 the investment committee memo was December 23 2013? 24 A. I believe, if memory serves, the Rise</p>	<p style="text-align: right;">Page 240</p> <p>1 Q. Right. 2 A. VPC provides a credit facility to fund 3 Rise, for the Rise product, separate and 4 distinct from any investment in GPLS. 5 Q. I see. So, so far today we've talked 6 about I think three instances in which GPLS 7 has made a determination in connection with 8 the Rise facility. First, we talked about the 9 gross sweeping, right? 10 A. Yes. 11 Q. And that was in connection with the Rise 12 facility, right? 13 MR. GATEWOOD: Objection, I 14 think that mischaracterizes the prior 15 testimony. 16 BY MR. GROGAN: 17 Q. Well, we'll let the record say what it 18 says about that. We talked about the 19 amendment or the waiver of the pre-payment -- 20 MR. GATEWOOD: Same 21 objection. 22 BY MR. GROGAN: 23 Q. And now we're talking about GPLS 24 relinquishing its interest in Rise receivables</p>

<p style="text-align: right;">Page 241</p> <p>1 to allow the refinancing through the Rise</p> <p>2 facility; is that correct?</p> <p>3 MR. GATEWOOD: Same</p> <p>4 objection.</p> <p>5 BY MR. GROGAN:</p> <p>6 Q. There's a question pending, I think.</p> <p>7 A. Sorry, can you read -- what is the</p> <p>8 pending question? -</p> <p>9 MR. GROGAN: Can you read it</p> <p>10 back, please.</p> <p>11 THE WITNESS: There's a lot</p> <p>12 of objection in the questions.</p> <p>13 MR. SHAPIRO: It was a very</p> <p>14 long -- are you sure you want to read this</p> <p>15 whole thing. This is the very long question,</p> <p>16 right?</p> <p>17 MR. GROGAN: No, I don't want</p> <p>18 to read --</p> <p>19 MR. SHAPIRO: Let's see if I</p> <p>20 can help. You're asking the witness if what</p> <p>21 this was about was a release of the GPLS lien?</p> <p>22 BY MR. GROGAN:</p> <p>23 Q. Yeah, that's fair. Can I get a yes or</p> <p>24 no to that?</p>	<p style="text-align: right;">Page 243</p> <p>1 took to achieve that. We value the</p> <p>2 relationship and have worked very hard to hold</p> <p>3 up our end of the bargain. I trust that you</p> <p>4 guys will do the same. I'm opened to</p> <p>5 suggestion as to how to alleviate risk for</p> <p>6 both parties. But I do have a sense of</p> <p>7 urgency to resolve this sooner, rather than</p> <p>8 later. I look forward to receiving Chris'</p> <p>9 analysis and I believe the numbers may reflect</p> <p>10 a smaller problem than perceived. I am around</p> <p>11 tomorrow if you'd like to discuss further.</p> <p>12 First, does what I just read</p> <p>13 -- do you agree that "we" meaning VPC, has</p> <p>14 allowed repayment of over 50 million plus of</p> <p>15 GPLS without pre-payment?</p> <p>16 MR. SHAPIRO: Objection,</p> <p>17 form, foundation.</p> <p>18 BY MR. GROGAN:</p> <p>19 Q. Do you recall that?</p> <p>20 A. Yes.</p> <p>21 Q. That's true?</p> <p>22 A. Yes.</p> <p>23 Q. Okay. I bet the phone calls and the</p> <p>24 side yelling were to Vinny. Okay. I am open</p>
<p style="text-align: right;">Page 242</p> <p>1 A. To my recollection, that's what I'm</p> <p>2 referring to.</p> <p>3 MR. GROGAN: Okay. Let's go</p> <p>4 to HH. This will be 329.</p> <p>5 - - -</p> <p>6 (Whereupon Exhibit P-329 was</p> <p>7 marked for identification.)</p> <p>8 - - -</p> <p>9 BY MR. GROGAN:</p> <p>10 Q. The portion of this e-mail that I'm</p> <p>11 interested in is the back and forth between</p> <p>12 Mr. Rees and Mr. Levy.</p> <p>13 A. Okay.</p> <p>14 Q. Let's start with Mr. Levy's e-mail to</p> <p>15 Mr. Rees on January 14, 2014. Ken, I don't</p> <p>16 really know what to say about our</p> <p>17 conversation. I reread the term sheet and</p> <p>18 feel it is very clear as to intent. I also</p> <p>19 reread the trail of e-mails and I don't see</p> <p>20 where there could be any confusion. We have</p> <p>21 allowed the repayment of over 50 million</p> <p>22 dollars plus of GPLS without pre-payment.</p> <p>23 I hope you understand the</p> <p>24 amount of phone calls and one-sided yelling it</p>	<p style="text-align: right;">Page 244</p> <p>1 to suggestions on how to alleviate risk for</p> <p>2 both parties. And I understand you're not a</p> <p>3 participant in this conversation, but you were</p> <p>4 cc'd at some point later on. Do you</p> <p>5 understand the risks that Mr. Levy is</p> <p>6 articulating there?</p> <p>7 MR. SHAPIRO: Objection,</p> <p>8 foundation.</p> <p>9 THE WITNESS: I would be</p> <p>10 speculating. The risk to -- given the context</p> <p>11 of this e-mail, would be around getting</p> <p>12 capital back that we could no longer invest</p> <p>13 because it was past a fund investment period.</p> <p>14 And the risk to -- be it GPLS or Think Finance</p> <p>15 would be, as we discussed earlier, if there's</p> <p>16 cash that's still owed an interest rate on,</p> <p>17 however, is not being invested to generate a</p> <p>18 return.</p> <p>19 BY MR. GROGAN:</p> <p>20 Q. Okay. And I think Mr. Rees explains</p> <p>21 that pretty well in the second paragraph of</p> <p>22 his response. What we can't do is agree to</p> <p>23 pay VPC interest on debt that we can't</p> <p>24 utilize. That's the problem we've been</p>

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1 UNITED STATES BANKRUPTCY COURT
2 NORTHERN DISTRICT OF TEXAS
3
4
5 IN RE:
6 THINK FINANCE, LLC, Case No.
ET AL 17-33964
(HDH)
7 Volume 3
8
9
10
11 VIDEOTAPED EXAMINATION UNDER OATH OF
12 BILLI ANNE RAINING BIRD
13
14
15 BE IT REMEMBERED, the Videotaped
16 Examination Under Oath of BILLI ANNE RAINING BIRD
17 was taken by Mr. Steven Ellis, Attorney at Law,
18 for the Debtor, at the Baldwin Court Reporting
19 Offices, 306 3rd Avenue, Suite 202, Havre,
20 Montana, on Friday, October 5, 2018, beginning at
21 the hour of 10:26 AM. Reported by Stacy M.
22 Baldwin, Registered Professional Reporter and
23 Notary Public.
24
25

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22 The videographer: Jennifer K. Wells
23
24
25

1	Exhibit 15	Servicing Agreement - Bates No. 88
2		TF-VA013170 through and including TF-VA013184
3	Exhibit 16	Marketing Agreement - Bates No. 99
4		TF-PA-001151 through and including TF-PA-001166
5	Exhibit 17	Participation Agreement - Bates 105
6		No. TF-PA-000038 through and including TF-PA-000068
7	Exhibit 18	Consumer Installment Loan 111
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10		TF-VA025676 through and including TF-VA0256578
11	Exhibit 20	Loan Underwriting Policy - 133
12		Bates No. TF-VA0701951 through and including TF-VA0701957
13	Exhibit 21	Email Chain - Bates No. 136
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1 (The Videotaped deposition began at 10:26 AM.)
 2 THE VIDEOGRAPHER: This is an
 3 audio/visual deposition taken in accordance with
 4 the US bankruptcy court. The recording equipment
 5 is being operated by Jennifer K. Wells. Her
 6 principal place of business is Jeffries Court
 7 Reporter Inc., which is located at 1015 Mount
 8 Avenue, Missoula, Montana. Today is Friday,
 9 October 5, 2018. The time is 10:37 AM. The
 10 deposition is being taken at the offices of
 11 Baldwin Court Reporting 306 3rd Avenue, Havre,
 12 Montana.

13 The caption of the case is In Re, Think
 14 Financial, LLC, et al, in the US Bankruptcy Court
 15 for the Northern District of Texas. Case No.
 16 17-33-964-HDH. Will counsel present -- will
 17 counsel and everyone present please introduce
 18 themselves.

19 MR. ELLIS: Yes. Good morning, this is
 20 Steven Ellis and I represent the Think Finance
 21 entities.

22 MR. GUZZO: Good morning, this is Andrew
 23 Guzzo, I represent the Virginia claimants in this
 24 case, and also my colleague Ms. Kelly, Kristi
 25 Kelly, will be joining us at some point when her

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1 other meeting finishes.

2 MR. WARD: This is Leo Ward representing
 3 the Think Finance, defendants.

4 MR. BYRNE: Hi, this is Matt Byrne, I
 5 represent Ms. Miller.

6 THE VIDEOGRAPHER: The name of the
 7 witness is Billi Anne Raining Bird and the oath
 8 will now be administered by the notary.

9 BILLI ANNE RAINING BIRD,
 10 called as a witness here, having been first duly
 11 sworn, was examined and testified as follows:

12 EXAMINATION

13 BY MR. ELLIS:

14 Q. Good morning, Ms. Raining Bird, this is
 15 Steven Ellis. I was the one who was questioning
 16 you during the first session of your deposition.
 17 And I just want to ask first and importantly, can
 18 you hear me okay?

19 A. Yes, it's fine.

20 Q. Okay. As we talked about last time, if I
 21 ask you a question and you don't understand,
 22 please let me know, and if you need to take a
 23 break at any time, please let me know that as
 24 well. Is that okay?

25 A. Yeah. That's fine.

7

1 Q. Thank you. When you were the CEO of
 2 Plain Green, how many hours per week did you work
 3 on matters relating to Plain Green?

4 A. Say maybe 60, I guess.

5 Q. And what about the earlier time when you
 6 were the COO, was it the same, more or less amount
 7 of work per week?

8 A. It was the same. It was pretty much I
 9 worked whenever, like, just whenever I needed to
 10 or all the time.

11 Q. Now, in the first session of this
 12 deposition we talked about a document that had
 13 been marked as Exhibit 3, which is a transcript of
 14 another deposition that was taken of you a few
 15 months ago in Great Falls. Do you remember that
 16 deposition?

17 A. Yes.

18 Q. Now for that deposition, the one that was
 19 in Great Falls a few months ago, did you receive a
 20 subpoena requiring you to testify?

21 A. No.

22 Q. Do you recall who told you about the
 23 deposition?

24 A. I think I received a phone call, I can't
 25 remember. But also Bobbi Favel, who is also -- I

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1 don't know if she's part of this too, but I guess
 2 she told me about it as well, but that's kind of
 3 how I heard about it, but I believe I received a
 4 phone call at home, so.

5 Q. And that is a phone call, did they just
 6 tell you when and where to show up?

7 A. Yes. I'm pretty sure that's what it was,
 8 yeah.

9 Q. Do you recall who you spoke to during
 10 that phone call?

11 A. No, I don't.

12 Q. Before you testified in that other
 13 deposition did you speak to anyone about the
 14 deposition? You mentioned someone called you on
 15 the phone, you mentioned Ms. Favel, anyone else?

16 A. No. Well, my federal probation officer
 17 is all.

18 Q. I'm sorry, could you just repeat that? I
 19 didn't hear the answer.

20 A. I just advised my federal probation
 21 officer about that I was requested to.

22 Q. Okay.

23 A. Yeah.

24 Q. Did you speak to anyone, anyone who's a
 25 member of the tribal council about the deposition?

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1 A. Yes.

2 Q. And Plain Green really had no role in

3 that process; is that right?

4 A. Other than I guess signing the agreement

5 to -- with that vendor, no.

6 Q. Okay. So, if a vendor made an error in

7 collections, that was something that Think Finance

8 would deal with, not Plain Green; is that right?

9 A. Yes.

10 Q. And if vendor had a question about an

11 account or a business procedure they would go to

12 Think Finance not Plain Green; is that right?

13 A. Yes, it would go through that call center

14 that handled that.

15 Q. Okay. And so, Plain Green didn't have

16 any employees that handled collections from 2011

17 through 2013; is that right?

18 A. That's correct.

19 Q. Okay. What about customer support, and,

20 you know, I guess that's pretty broad. So I

21 assume what this means is the interaction between

22 a consumer and what would probably be represented

23 as Plain Green, but can you tell me what you think

24 customer support means?

25 A. That customer support could be just in

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1 general questions about their loan or complaints

2 about their loan or just any inbound calls

3 regarding, I guess, any area of the loan process,

4 I guess.

5 Q. Okay. And so, from 2011 until you left

6 Plain Green, that was not handled on the

7 reservation by Plain Green employees; is that

8 right?

9 A. That's correct. We did not handle that.

10 Q. So, if someone emails complaints at

11 plaingreen.com that email actually didn't go to an

12 employee of Plain Green; is that right?

13 A. I don't think so, no, it did not.

14 Q. If a consumer wrote a letter to Plain

15 Green complaining about the status of their loan

16 or payment, that would not have been dealt with by

17 Plain Green either, right?

18 A. Not originally, no.

19 Q. And if a consumer called Plain Green's

20 telephone number, who would get that call?

21 A. I guess if they called the number that

22 was on the website or on the materials that they

23 had.

24 Q. Yeah.

25 A. We would not get that call. That call

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1 would be to a call center and I believe the call

2 center was at Think Finance for that one.

3 Q. And Think Finance managed the

4 relationship with the call center; is that right?

5 A. Yes.

6 Q. Okay. Finally, was this agreement in

7 effect when you stopped working for Plain Green?

8 A. Yes.

9 Q. Okay. All right. I'm going to switch

10 now to the fifth document I sent Stacy. That is

11 the marketing agreement.

12 (Exhibit 16 marked for identification.)

13 BY MR. GUZZO:

14 Q. Ms. Raining Bird, do you recognize this

15 document?

16 A. Yes.

17 Q. Okay. And if you turn to the back of

18 this agreement on Page 14, I'm hoping that you

19 will see your signature on the document?

20 A. Yes.

21 Q. Do you see that?

22 A. Yes, I do.

23 Q. This isn't --

24 A. Yes. My signature is on there, yeah.

25 Q. All right. And is Jason Harvison's

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1 signature on that?

2 A. Yes.

3 Q. All right. Good. And you signed this

4 document on behalf of Plain Green in your capacity

5 as a chief operations officer; is that right?

6 A. Yes.

7 Q. What was the purpose of this document?

8 A. Marketing campaigns, which included

9 website, maybe mailings, any brochures or emails,

10 advertisements basically, yeah, all of it.

11 Q. So this is the agreement where, between

12 Plain Green and Tailwinds where Tailwinds agreed

13 to provide marketing services to Plain Green; is

14 that right?

15 A. Yes.

16 Q. And Tailwind was paid to perform those

17 services under that agreement; is that right?

18 A. Yes.

19 Q. And what services were provided by

20 Tailwind to Plain Green, to the best you can

21 recollect?

22 A. They did bulk mail outs, they developed

23 the website, you know, just the -- you know,

24 pretty much branding the product and promoting the

25 product, sending out mass emails, buying spots,

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1 you know, when you enter a -- when you do a search
2 where Plain Green would come up at the top or
3 closer to the top. Just any promotion of the
4 product.

5 Q. And what role did Plain Green have in the
6 marketing of the loans?

7 A. None.

8 Q. Okay. So you didn't personally
9 participate in the development of any marketing
10 strategies, did you?

11 A. No.

12 Q. Do you understand what the term pro forma
13 means?

14 A. Yeah.

15 Q. And what does the word pro forma mean to
16 you?

17 A. I don't know. I guess I'm not even sure.

18 Q. All right. I'm going to read the
19 definition of this, and I'm going to ask you to
20 say whether, what you think about this. So pro
21 forma means to be done or produced as a matter of
22 form, according to the dictionary.

23 So, essentially, it means to be done
24 without substance or contribution. And so, would
25 you say that Plain Green's review of any marketing

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1 materials was pro forma?

2 A. Yes.

3 Q. So you would agree that you didn't have
4 any meaningful input on any of the marketing
5 materials; is that right?

6 A. Yes, I agree with that.

7 Q. And so when we talked earlier about being
8 fearful that Think Finance would terminate the
9 relationship if you didn't agree with something,
10 you would agree that one of the things would be
11 that that statement would apply to would be
12 marketing, right?

13 A. Yes.

14 Q. And so, if you didn't like a direct
15 mailing or a website design, you believe you
16 wouldn't really be able to put meaningful input
17 into that under this agreement; is that right?

18 A. Yes.

19 Q. So just a few final questions about this
20 agreement. What is your understanding of what
21 Tailwind Marketing is?

22 A. It's just another, another branch of
23 Think Finance.

24 Q. Okay. And in communicating with Think
25 Finance pursuant to marketing, did you ever email

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1 with any employees of Tailwind?

2 A. I meant, I've never seen anybody that
3 introduced themselves as working for Tailwind, no.

4 Q. So all of your marketing communications
5 with Think Finance, were with Think Finance, not
6 Tailwind; is that correct?

7 A. Yes.

8 MR. ELLIS: Objection to the form.

9 BY MR. GUZZO:

10 Q. So did that ever concern you?

11 A. Yeah.

12 Q. And so, would it be fair to say, that you
13 were concerned that you would be paying a company
14 that you didn't even interact with?

15 A. No. My concern was that we were paying
16 one company -- we were paying one company six,
17 seven times.

18 Q. Yeah. So, I guess, it seemed like Think
19 Finance was double dipping, so to speak?

20 A. It was more than double.

21 MR. ELLIS: Objection.

22 THE WITNESS: Yes, every agreement would
23 be another bit.

24 (Whereupon, the Court Reporter
25 interrupted for clarification.)

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1 MR. ELLIS: Objection, argumentative.

2 BY MR. GUZZO:

3 Q. And we earlier talked about how, you
4 know, this was seen has a take-it-or-leave-it deal
5 for the term sheet, do you remember that?

6 A. Yes.

7 Q. Would that be the same for the marketing
8 agreement?

9 A. Yes.

10 Q. And the same for the servicing agreement,
11 right, that was a take-it-or-leave-it agreement?

12 A. Yes.

13 Q. And why did they -- did Plain Green's
14 employees -- or Plain Green's attorneys have input
15 on these agreements, do you recall?

16 A. I meant, they reviewed them, but they
17 didn't have really any input, like, I don't ever
18 recall them making any modifications or changes to
19 them.

20 Q. And when you say that you were fearful
21 that, you know, Think Finance would move to
22 another tribe. Do you think that the attorney
23 that Plain Green shared that same sentiment?

24 MR. ELLIS: Objection, lack of
25 foundation.

UNSEALED

In the Matter of:

Case No. 2012-109-02

April 7, 2016
Kim Palermo

Condensed Transcript with Word Index



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1	3
<p>1 CONSUMER FINANCIAL PROTECTION BUREAU</p> <p>2</p> <p>3 In the matter of:)</p> <p>4 Case No. 2012-109-02)</p> <p>5 -----)</p> <p>6</p> <p>7 Thursday, April 7, 2016</p> <p>8</p> <p>9 Consumer Financial Protection Bureau</p> <p>10 1625 Eye Street, N.W.</p> <p>11 Washington, D.C.</p> <p>12</p> <p>13</p> <p>14 The above-entitled matter came on for</p> <p>15 investigational hearing, pursuant to notice, at</p> <p>16 9:30 a.m.</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>	<p>1 P R O C E E D I N G S</p> <p>2 - - - - -</p> <p>3 MR. VAUGHN: This is an investigational hearing</p> <p>4 governed by 12 U.S.C. 5562 and its implementing</p> <p>5 regulations. Any objections that may be properly raised</p> <p>6 are limited as set forth in the regulations.</p> <p>7 The stenographic recording arranged by the</p> <p>8 Bureau is the only recording permitted and no other</p> <p>9 recording may be created.</p> <p>10 This hearing is being conducted by myself,</p> <p>11 Benjamin Vaughn, my colleague, Vanessa Buchko and</p> <p>12 Melanie Hirsch.</p> <p>13 Will you please swear in the witness.</p> <p>14 Whereupon--</p> <p>15 KIM PALERMO</p> <p>16 a witness, called for examination, having been first</p> <p>17 duly sworn, was examined and testified as follows:</p> <p>18 EXAMINATION</p> <p>19 BY MR. VAUGHN:</p> <p>20 Q. Will you please state your full name.</p> <p>21 A. Kim Palermo.</p> <p>22 Q. Ms. Palermo, are you represented by counsel here</p> <p>23 today?</p> <p>24 A. Yes, I am.</p> <p>25 MR. VAUGHN: Counsel, would you please identify</p>
2	4
<p>1 APPEARANCES:</p> <p>2</p> <p>3 ON BEHALF OF THE CONSUMER FINANCIAL PROTECTION BUREAU:</p> <p>4 BENJAMIN VAUGHN, ESQ.</p> <p>5 VANESSA BUCHKO, ESQ.</p> <p>6 MELANIE HIRSCH, ESQ.</p> <p>7 Consumer Financial Protection Bureau</p> <p>8 1625 Eye Street, N.W.</p> <p>9 Washington, DC 20006</p> <p>10 (202) 435-7944</p> <p>11 vanessa.buchko@cfpb.gov</p> <p>12</p> <p>13 ON BEHALF OF MOBILOANS AND THE WITNESS:</p> <p>14 CHRISTINA M. GATTUSO, ESQ.</p> <p>15 ERICH M. HELLMOLD, ESQ.</p> <p>16 Kilpatrick Townsend & Stockton LLP</p> <p>17 607 14th Street, N.W., Suite 900</p> <p>18 Washington, DC 20005</p> <p>19 (202) 508-5884</p> <p>20 cgattuso@kilpatricktownsend.com</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>	<p>1 yourself.</p> <p>2 MS. GATTUSO: Chris Gattuso, Kilpatrick</p> <p>3 Townsend.</p> <p>4 MR. HELLMOLD: Eric Hellmold, Kilpatrick</p> <p>5 Townsend.</p> <p>6 BY MR. VAUGHN:</p> <p>7 Q. Ms. Palermo, have you ever been deposed before</p> <p>8 or given testimony under oath?</p> <p>9 A. Yes, I have.</p> <p>10 Q. When were those testimonies given?</p> <p>11 A. A long time ago when I worked at the bank, more</p> <p>12 than 10 years ago.</p> <p>13 Q. Were those depositions in civil litigation?</p> <p>14 A. Yes.</p> <p>15 Q. Did you ever testify in court?</p> <p>16 A. Yes.</p> <p>17 Q. Also for the bank?</p> <p>18 A. Correct.</p> <p>19 Q. So, I'll just go over some quick ground rules,</p> <p>20 but it sounds like you're more of a veteran than most</p> <p>21 would be. So, it's important that you give verbal</p> <p>22 answers here today so the court reporter can record</p> <p>23 anything you say. It's important that we not talk over</p> <p>24 each other, so I will do my absolute best to always let</p> <p>25 you finish your answer before any of us ask you another</p>

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1 Administrative Services.

2 **Q. Oh, okay. TC, thank you. What does the C stand**
3 **for?**

4 A. I believe it was like Think Cash or something
5 like that, I remember seeing somewhere, but I
6 couldn't -- I think they had a product before that.

7 **Q. What services does TC Administrative Services**
8 **provide to Mobiloans?**

9 A. They advise and consult regarding risk
10 management, underwriting, application processing,
11 payment processing, and vendor management.

12 **Q. Would you say that list again, please.**

13 A. I will. Advice and consulting regarding the
14 risk management, underwriting, application processing,
15 processing of payments, and oversight and management of
16 vendors.

17 **Q. So, taking the first one, risk management, what**
18 **specific services does TC Administrative Services**
19 **provide to Mobiloans in terms of risk management?**

20 A. They may be the risk department at Think. I
21 used to have emails that had TC Decision Sciences and TC
22 Administrative Services, but after the split with
23 Elevate, everything is Think Finance.

24 **Q. And can you name anyone who works at TC**
25 **Administrative Services?**

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1 A. Currently, no. I could look through some emails
2 and see if there's any current emails with that, but
3 most everything now is Think Finance. I know at one
4 point that the Stephen Smith that I had interviewed with
5 is their compliance director, he was part of TC Decision
6 Sciences because I would get emails from both, both
7 email addresses for him, but mostly everything now is
8 just Think Finance.

9 **Q. So, what specific services do they provide in**
10 **terms of risk management?**

11 A. That would probably be the risk in setting up
12 the 7x7 matrix and the marketing and the default rate,
13 that type of thing.

14 **Q. Is there any other services you can think of**
15 **that would fall under the heading risk management?**

16 A. Part of the underwriting, when we're looking at
17 changes in the underwriting, risk is definitely in there
18 in looking at different options as to changing the
19 format of the underwriting process.

20 BY MR. VAUGHN:

21 **Q. But to be clear, there is a legal agreement that**
22 **spells out that TC Administrative is supposed to get \$25**
23 **per funded loan, but as you sit here today, you're not**
24 **certain which services Think provides that fall under**
25 **that umbrella?**

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1 A. Correct. Correct. Because we know that these
2 companies are Think companies. We know that their
3 employees are doing those jobs.

4 **Q. What specific services do TC Administrative**
5 **Services or Think provide with regard to underwriting?**

6 A. They develop the underwriting. They have a
7 proprietary risk core that we use that the initial
8 underwriting that was used was created by them. I know
9 that there's been changes from inception in regards to
10 different types of data that is used in the
11 underwriting, but that basic criteria is maintained the
12 same. Their risk score comes from their data that they
13 have in regards to customer activity, and they create a
14 risk core based off of that.

15 **Q. Customer activity with Think Finance or with**
16 **these loans, or from other --**

17 A. With I'm sure all of the products that they
18 service. They have created a data pool from there where
19 they can determine with more precision behaviors that
20 would lead to first payment defaults, that type of
21 thing.

22 BY MR. VAUGHN:

23 **Q. So, the software generates -- based on the data**
24 **inputs, the software generates a risk score, and if the**
25 **penultimate risk score falls within --**

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1 A. A certain range, correct.

2 **Q. -- the loan will be funded?**

3 A. Correct. Or declined.

4 **Q. Or declined. And it's your understanding that**
5 **the risk score that's generated is a product of Think's**
6 **analysis of all of the products that they service?**

7 A. Correct. When I had gone through when I sat
8 down with him with regards to the underwriting, learning
9 that process, there, of course, is a whole flow chart
10 basically of when the loan comes in, you know, the
11 points that it hits, what's a knockout rule that would
12 immediately knock that out, it requires verifications,
13 manual verifications, that kind of thing, but when they
14 get to the risk score, it's kind of their proprietary
15 thing. They won't give me all the details.

16 I know the items that make it up, but I don't
17 know how it's weighted to create that score, because
18 they consider that proprietary, they won't give me that
19 information.

20 **Q. So, you know what the data inputs are that go**
21 **into the database, the decision engine?**

22 A. Correct.

23 **Q. But you don't know how the decision engine comes**
24 **up with a score?**

25 A. With the risk score. How it's weighted in order

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1 to create the score. But I know what the inputs are
2 that they look at for that.

3 **Q. And you know certain knockout rules that will**
4 **automatically disqualify an applicant?**

5 A. Correct.

6 **Q. But if an applicant makes it past the knockout**
7 **rules, you don't know what happens between then and the**
8 **risk score to come up with a risk score?**

9 A. I know that it continues to go through the
10 underwriting process, and part of that underwriting
11 process is the risk score, and that's based on points,
12 data points, within that application. How that's
13 weighted to create the risk score and how they generated
14 what's a cut-off score, I don't have that information.

15 **Q. You don't actually have the cut-off score?**

16 A. No, I have the cut-off score, but how they
17 determine what was a cut-off score. You know, so they
18 have that information.

19 **Q. So, you know the cut-off score is 460?**

20 A. Correct, yeah.

21 **Q. But you don't know how they figure out that my**
22 **application is 520?**

23 A. Correct.

24 BY MS. BUCHKO:

25 **Q. Does anybody at Mobiloans have that information?**

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1 A. No. Again, they consider that proprietary and
2 they won't give us that piece of it.

3 BY MR. VAUGHN:

4 **Q. And you've asked?**

5 A. Yes.

6 **Q. Who did you ask?**

7 A. I asked Martin Wong, I have asked the risk
8 people, I have asked the underwriting people, and -- but
9 they consider it proprietary and they will not give me
10 that information.

11 BY MS. BUCHKO:

12 **Q. Do they have any nicknames for that proprietary**
13 **information?**

14 A. No, it's -- unless it's RS, which is risk score,
15 11, which is the version that they are using. That's
16 what they're -- you know, when I'm looking at the
17 underwriting waterfall, and we come up to the RS score,
18 that's what they're talking about.

19 **Q. Earlier you said something about "we use the**
20 **proprietary risk score." What exactly does Mobiloans do**
21 **with the proprietary risk score?**

22 A. Our applications go through -- and I say we,
23 because I'm talking about our customers go through that
24 system. We -- that's our vendor, we're paying for that.
25 So, that's just the way I refer to it.

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1 **Q. What services does TC Administrative Services,**
2 **or Think Finance, provide with regard to payment**
3 **processing?**

4 A. It goes through their system. I mean, when a
5 customer wants to make a payment, they can go online,
6 and they can set up to have an ACH payment from their
7 account and they can set that up online through their
8 account. So, all of that will go through the platform
9 where it's posted in that information.

10 If they want to set up where they revoke the ACH
11 and they want to just send a manual payment, then they
12 can take that part off of the system.

13 If they want to pay by a debit card, they can
14 call in and say, I want to make this payment via a debit
15 card, and that system is through the platform. So,
16 that's where they're providing the help in the
17 processing, the payment processing.

18 BY MR. VAUGHN:

19 **Q. Before the lunch break, you testified that Think**
20 **uses an out-of-date software platform that was**
21 **originally designed for credit cards that's resulted in**
22 **lots of problems. Is that the computer system that**
23 **you're talking about now that processes ACH payments and**
24 **provides those services, or are you talking about a**
25 **different system?**

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1 A. In regards to posting them to the account, I
2 believe when you take an ACH payment, it has to go
3 through the processor. So, when the funds are actually
4 posted to the account, it goes through that platform
5 system.

6 **Q. And that's the platform that you were talking**
7 **about earlier?**

8 A. Correct. Correct.

9 **Q. And is this -- I've heard it referred to as**
10 **CoreCard, is that your understanding that the Core**
11 **system is the loan management system that handles the**
12 **servicing of the loan, the payments and those types of**
13 **issues?**

14 A. Correct. And some of the issues when we were
15 talking about the double payments has to do when the
16 system or Core or whatever creates the ACH file to send
17 to the banks, the would could be a problem where it
18 actually doubles it. That's where the processing
19 issues, where Think's issues -- now, there were some
20 issues with the processor themselves, but there were
21 some issues with the Think -- it was the platform that
22 created the issue.

23 **Q. The loan management platform?**

24 A. Correct.

25 BY MS. BUCHKO:

Page 1	<p style="text-align: center;">IN THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF PENNSYLVANIA</p> <p style="text-align: center;">- - -</p> <p>COMMONWEALTH OF : PENNSYLVANIA : Plaintiff : : VS. : CIVIL ACTION NUMBER : 2:14-CV-07139 THINK FINANCE, INC., : ET AL., : Defendants : - - - OCTOBER 16, 2018 - - -</p> <p>Videotaped deposition of CLAUDIA CALLAWAY, was taken pursuant to notice at 700 Sixth Street NW, Suite 700, Washington, D.C., beginning at or about 9:30 a.m. before Jeannine Cancelliere, Court Reporter and Notary Public and David Levin, Videotape Operator, there being present.</p> <p style="text-align: center;">KAPLAN, LEAMAN AND WOLFE Registered Professional Reporters 230 S. Broad Street, Suite 1303 Philadelphia, Pennsylvania 19102</p>	Page 3
Page 2	<p>1 APPEARANCES:</p> <p>2</p> <p>3 LANGER, GROGAN & DIVER, P C</p> <p>4 BY: IRV ACKELSBERG, ESQUIRE</p> <p>5 BY: JOHN J GROGAN, ESQUIRE</p> <p>6 1717 Arch Street, Suite 4130</p> <p>7 Philadelphia, Pennsylvania 19103</p> <p>8 Phone: (215) 320-5701</p> <p>9 Representing the Plaintiff</p> <p>10 jgrogan@langergrogan.com</p> <p>11</p> <p>12 ARMSTRONG TEASDALE</p> <p>13 BY: RICHARD SCHEFF, ESQUIRE</p> <p>14 1500 Market Street, 12th Floor</p> <p>15 Philadelphia, Pennsylvania 19102</p> <p>16 Phone: (215) 246-3478</p> <p>17 Representing Ken Rees</p> <p>18 rscheff@armstrongteasdale.com</p> <p>19</p> <p>20 KATTEN, MUCHIN, ROSENMAN LLP</p> <p>21 BY: PATRICK SMITH, ESQUIRE</p> <p>22 BY: J MATTHEW HAWS, ESQUIRE</p> <p>23 525 W Monroe Street</p> <p>24 Chicago, Illinois 60661-3693</p> <p>Phone: (312) 902-5319</p> <p>Representing Victory Park</p> <p>patrick.smith@kattenlaw.com</p> <p>VAN NESS FELDMAN</p> <p>BY: KETURAH BROWN, ESQUIRE</p> <p>1050 Thomas Jefferson Street, NW</p> <p>Washington, D C 20007-3877</p> <p>Phone: (202) 298-1800</p> <p>Representing National Credit</p> <p>Adjusters LLC</p> <p>kab@vnf.com</p>	Page 4

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Page 6	Page 8
<p>1 VIDEOTAPE OPERATOR: We're now</p> <p>2 on the record. My name is David Levin, I am a</p> <p>3 videographer employed by On the Record. This</p> <p>4 is a video deposition in the United States</p> <p>5 District Court for the Eastern District of</p> <p>6 Pennsylvania, civil action number</p> <p>7 23:14-CV-07139.</p> <p>8 Today's date is Tuesday, October</p> <p>9 16th, 2018 and the video time is 9:43 a.m.</p> <p>10 This deposition is being held at 700 Sixth</p> <p>11 Street Northwest, Suite 700, Washington D.C.</p> <p>12 in the matter of Commonwealth of Pennsylvania</p> <p>13 versus Think Finance, Incorporated, Et Al.</p> <p>14 The deponent is Claudia Callaway. Would all</p> <p>15 counsel please identify themselves and say</p> <p>16 whom they represent.</p> <p>17 MR. ACKELSBURG: For the</p> <p>18 Commonwealth, Irv Ackelsberg.</p> <p>19 MR. GROGAN: John Grogan also</p> <p>20 for the Commonwealth.</p> <p>21 MR. SMITH: Patrick Smith for</p> <p>22 the Victory Park defendants</p> <p>23 MS. BROWN: Keturah Brown for</p> <p>24 NCA.</p>	<p>1 meet you. I have already introduced myself,</p> <p>2 I'm Irv Ackelsberg. I'm special counsel for</p> <p>3 the Pennsylvania Attorney General.</p> <p>4 You're here pursuant to a</p> <p>5 subpoena, correct?</p> <p>6 A. Correct.</p> <p>7 Q. Okay. Just for the record I'm going to</p> <p>8 identify that subpoena. And we'll call it</p> <p>9 P-374. Just so that you understand, I was</p> <p>10 about to identify it as Callaway-1, but I</p> <p>11 think what we're going to do is just continue</p> <p>12 -- we've had a number of depositions, and</p> <p>13 we've just been using this numerical system</p> <p>14 where we're just continuing with the</p> <p>15 numbering. And I think that's what I am going</p> <p>16 to do today. I hope it's not too confusing.</p> <p>17 Anyway, we're going to call this P-374.</p> <p>18 - - -</p> <p>19 (Whereupon Exhibit P-374 was</p> <p>20 marked for identification.)</p> <p>21 - - -</p> <p>22 BY MR. ACKELSBURG:</p> <p>23 Q. I am going to ask you to identify that</p> <p>24 as the subpoena, pursuant to which you're here</p>

<p style="text-align: right;">Page 21</p> <p>1 Q. What is FSFA?</p> <p>2 A. It was the Financial Service Centers of</p> <p>3 America.</p> <p>4 Q. There's also a trade association that I</p> <p>5 think is called CFSA, right? Community</p> <p>6 Financial Service Association.</p> <p>7 A. Yes.</p> <p>8 Q. Are these two separate associations or</p> <p>9 CFSA a more recent name for FSFA?</p> <p>10 A. I believe they're separate.</p> <p>11 Q. Okay. Are you a member of FSFA?</p> <p>12 A. I am not.</p> <p>13 Q. Are you a member of CFSA?</p> <p>14 A. I am not.</p> <p>15 Q. But you go to -- you go to FSFA</p> <p>16 conferences regularly?</p> <p>17 A. I do not go to them regularly.</p> <p>18 Q. What about CFSA?</p> <p>19 A. I do not go to CFSA regularly.</p> <p>20 Q. But you're occasionally invited to speak</p> <p>21 though, correct?</p> <p>22 A. In the past I have been, yes.</p> <p>23 Q. At both FSFA and CFSA conferences?</p> <p>24 A. Yes.</p>	<p style="text-align: right;">Page 23</p> <p>1 understand.</p> <p>2 THE WITNESS: I do.</p> <p>3 BY MR. ACKELSBURG:</p> <p>4 Q. What do you remember?</p> <p>5 A. I had a toddler at the time who was</p> <p>6 sitting behind me while I was giving my</p> <p>7 presentation. And I had handed him a set of</p> <p>8 markers and a pad, with which to entertain</p> <p>9 himself. And as I was speaking, he stood up</p> <p>10 and showed the audience that his hands were</p> <p>11 covered in Sharpie ink. And the audience was</p> <p>12 very understanding.</p> <p>13 Q. This is while you were speaking?</p> <p>14 A. Yes, yes.</p> <p>15 Q. And then bring Mr. Stinson into the</p> <p>16 scene.</p> <p>17 A. As I recall, it was either Mr. Stinson</p> <p>18 or somebody else from his company and Mr.</p> <p>19 Stinson, who came up and introduced himself or</p> <p>20 themselves.</p> <p>21 Q. Might it have been Jason Harvison?</p> <p>22 A. That would have been who it would have</p> <p>23 been, yes.</p> <p>24 Q. Jason Harvison and Mike Stinson were at</p>
<p style="text-align: right;">Page 22</p> <p>1 Q. Okay. And is that -- on the occasions</p> <p>2 when you are speaking to companies that are</p> <p>3 members of these associations, is that one way</p> <p>4 that you can develop new business for you and</p> <p>5 your firm?</p> <p>6 A. It is a way I have developed business in</p> <p>7 the past, yes.</p> <p>8 Q. Okay. And what do you recall of the</p> <p>9 meeting at FSFA in which you first met Mr.</p> <p>10 Stinson? Do you remember the topic that you</p> <p>11 were speaking on?</p> <p>12 A. I do not.</p> <p>13 Q. Do you remember anything about the</p> <p>14 conversation -- the meeting with Mr. Stinson?</p> <p>15 A. I do.</p> <p>16 MR. GATEWOOD: Objection.</p> <p>17 I'll just instruct the witness not to answer,</p> <p>18 to the extent that she would be divulging</p> <p>19 attorney/client communications.</p> <p>20 MR. ACKELSBURG: Yeah, well,</p> <p>21 we're just talking about meeting people.</p> <p>22 MR. GATEWOOD: Sure. But the</p> <p>23 instruction is necessary on the front end.</p> <p>24 MR. ACKELSBURG: I</p>	<p style="text-align: right;">Page 24</p> <p>1 the FSFA conference after this light moment</p> <p>2 with your toddler. After the presentation,</p> <p>3 Mike and Jason came up to talk to you?</p> <p>4 A. As I recall, yes.</p> <p>5 Q. Without divulging any legal advice, what</p> <p>6 did you talk about?</p> <p>7 A. That, I don't recall.</p> <p>8 Q. But as a result of that meeting, you</p> <p>9 began a relationship with Payday One?</p> <p>10 A. I began a relationship with Payday One</p> <p>11 after that.</p> <p>12 Q. Okay. And we'll probably re-visit that</p> <p>13 at some point. I'm fairly sure we will, but</p> <p>14 let's continue the history. Actually, why</p> <p>15 don't I ask you -- let's do Manatt first.</p> <p>16 Let's go to Manatt.</p> <p>17 Did you finish with the Paul</p> <p>18 Hastings on the payday lender side, Advance</p> <p>19 America, Payday OK and Payday One? Were there</p> <p>20 others?</p> <p>21 MR. GATEWOOD: Objection,</p> <p>22 form.</p> <p>23 THE WITNESS: There were</p> <p>24 others.</p>

<p style="text-align: right;">Page 25</p> <p>1 BY MR. ACKELSBURG:</p> <p>2 Q. Oh, okay. I'm sorry. I didn't mean to</p> <p>3 cut you off.</p> <p>4 A. Sitting here, I can't recall names of</p> <p>5 other payday lenders that I represented at</p> <p>6 Paul Hastings.</p> <p>7 Q. Do you think there were two more, four</p> <p>8 more, ten more, twenty more? Roughly how many</p> <p>9 payday lenders were you representing by the</p> <p>10 time you were at Paul Hastings?</p> <p>11 MR. GATEWOOD: Objection,</p> <p>12 form.</p> <p>13 THE WITNESS: I would</p> <p>14 estimate between five and ten.</p> <p>15 BY MR. ACKELSBURG:</p> <p>16 Q. Now, one of those being Adrian Rubin?</p> <p>17 A. I don't believe I represented Mr. Rubin.</p> <p>18 Q. I mean his companies, I don't mean him</p> <p>19 personally. I mean the payday lending</p> <p>20 websites. You remember Mr. Rubin, right?</p> <p>21 A. I do remember Mr. Rubin.</p> <p>22 Q. I think -- to refresh your recollection,</p> <p>23 I think one was CashNet500, one was CRA</p> <p>24 Services. There were a variety of names that</p>	<p style="text-align: right;">Page 27</p> <p>1 represented TC Services.</p> <p>2 Q. What was that?</p> <p>3 A. That was not a payday lender.</p> <p>4 Q. What kind of a lender was it?</p> <p>5 A. It was a company that serviced loans for</p> <p>6 a federally insured bank.</p> <p>7 Q. All right, we're going to get into the</p> <p>8 bank model at some point. And I am going --</p> <p>9 you will have the chance to explain sort of</p> <p>10 the difference between, you know, service</p> <p>11 providers -- we'll get into all of that stuff.</p> <p>12 But I'm really just -- in terms of who your</p> <p>13 client contact was, did you have any client</p> <p>14 relationship with Charlie Hallinan? I guess</p> <p>15 we're still talking about the Paul Hastings</p> <p>16 years. Did you have any client contact with</p> <p>17 Charlie Hallinan?</p> <p>18 MR. GATEWOOD: Objection to</p> <p>19 form.</p> <p>20 MR. HELWIG: I'm going to</p> <p>21 object. These long-speaking dialogues, we</p> <p>22 don't care when you're going to get to what</p> <p>23 you're getting to or why, just ask a question.</p> <p>24 I think it will be more efficient.</p>
<p style="text-align: right;">Page 26</p> <p>1 he used, but my understanding was that you</p> <p>2 were representing Adrian Rubin or his</p> <p>3 companies at some point?</p> <p>4 MR. GATEWOOD: Objection,</p> <p>5 form.</p> <p>6 BY MR. ACKELSBURG:</p> <p>7 Q. Is that not true?</p> <p>8 A. I don't believe I represented Mr.</p> <p>9 Rubin's companies at Paul Hastings.</p> <p>10 Q. It might have been Manatt?</p> <p>11 A. I may -- I know I would have liked to</p> <p>12 represent Mr. Rubin's companies.</p> <p>13 Q. Because of the volume? Or why?</p> <p>14 A. Because they had litigation. But I</p> <p>15 can't recall whether I represented Mr. Rubin's</p> <p>16 companies.</p> <p>17 Q. Okay, we'll come back to Mr. Rubin.</p> <p>18 What about Charlie Hallinan?</p> <p>19 A. I did not represent Mr. Hallinan</p> <p>20 personally.</p> <p>21 Q. I don't mean personally. I mean the</p> <p>22 companies associated with Charlie Hallinan,</p> <p>23 the payday lending websites.</p> <p>24 A. When I was at Paul Hastings, I</p>	<p style="text-align: right;">Page 28</p> <p>1 BY MR. ACKELSBURG:</p> <p>2 Q. Did up represent Charlie Hallinan or his</p> <p>3 companies?</p> <p>4 A. I represented -- I did not represent Mr.</p> <p>5 Hallinan individually. I represented TC</p> <p>6 Services.</p> <p>7 Q. So that was the company you referred to</p> <p>8 before. Okay. When you said TC -- the reason</p> <p>9 I wasn't quite sure is that Think Finance had</p> <p>10 something called TC Services. I wasn't sure</p> <p>11 you were talking about Mr. Hallinan or Think</p> <p>12 Finance.</p> <p>13 So you -- what you recall is</p> <p>14 there was a company called TC Services that</p> <p>15 had a business in the payday lending world,</p> <p>16 and that Charlie Hallinan was somehow</p> <p>17 connected to it; would that be accurate?</p> <p>18 MR. GATEWOOD: Objection to</p> <p>19 form.</p> <p>20 THE WITNESS: That's not an</p> <p>21 accurate description of my recollection.</p> <p>22 BY MR. ACKELSBURG:</p> <p>23 Q. Then please fix it for me.</p> <p>24 A. I represented TC Services. That was a</p>

<p style="text-align: right;">Page 29</p> <p>1 marketer and servicer for loans made by a 2 federally insurance insured depository 3 institution. Charlie Hallinan was my client 4 contact. 5 Q. Okay. At TC Services? 6 A. Yes. 7 Q. Okay. All right, any other -- what 8 about Scott Tucker? Did you ever represent 9 Scott Tucker? 10 A. I did not. 11 Q. Any of his companies? 12 A. I don't believe so, no. 13 Q. Now let's move to Manatt Phelps, 2006 to 14 2009. Did you bring on any additional payday 15 lenders? 16 A. I did represent -- I did bring new -- I 17 did develop new payday lender business at 18 Manatt, yes. 19 Q. What are some of those payday lenders, 20 that you remember? 21 A. I remember Integrity Advance. Sitting 22 here today, I don't remember new companies. 23 Q. Okay. Now before -- you're familiar 24 with the distinction between payday loans and</p>	<p style="text-align: right;">Page 31</p> <p>1 form. 2 THE WITNESS: I don't know 3 that I can talk about CashCall. 4 BY MR. ACKELSBURG: 5 Q. I'm just asking you names of clients. 6 MR. HELWIG: If you're asking 7 was CashCall a client, she can answer that. 8 But as you know, my position with respect to 9 -- 10 MR. ACKELSBURG: We'll get to 11 that in a minute. I want to -- really I'm 12 just sort of identifying clients. 13 THE WITNESS: Yes, CashCall. 14 BY MR. ACKELSBURG: 15 Q. Would that be an example of a lender 16 that was making what I'll call high-rate loans 17 over the internet, but did not make short-term 18 payday loans? 19 MR. HELWIG: You can answer 20 that question. 21 THE WITNESS: High rate, I 22 don't want to opine on the interest rate, but 23 that is an example of a company that made 24 installment loans rather than single payment</p>
<p style="text-align: right;">Page 30</p> <p>1 installment loans? 2 A. I am familiar with people describing the 3 two differently, yes. 4 Q. And you had some companies that -- would 5 it be correct to say over the years, you had 6 some companies that did only the payday loans 7 and only installment loans; or some that did 8 both? 9 MR. GATEWOOD: Objection, 10 form. 11 THE WITNESS: Based on my 12 understanding, and I should say a payday loan 13 would be small dollar, short-term loan that 14 can be paid in two weeks say, yes. Yes. 15 BY MR. ACKELSBURG: 16 Q. So of the clients that you had up until 17 the time you joined Katten, were there also 18 lenders that you represent who were 19 exclusively installment lenders, as opposed to 20 payday lenders? 21 A. Yes. 22 Q. Can you give me those names? One would 23 be CashCall, right? 24 MR. GATEWOOD: Objection,</p>	<p style="text-align: right;">Page 32</p> <p>1 loans. 2 BY MR. ACKELSBURG: 3 Q. Okay. When I say high rate, just so 4 that we're clear, let's say anything over 100 5 percent APR, okay? 6 A. Okay. 7 Q. Does that still include CashCall? 8 A. I don't know if it does. 9 Q. Okay. Were there -- besides CashCall, 10 were there other clients, up until the time 11 you arrived at Katten, who you would be 12 comfortable in classifying as installment 13 lenders as opposed to payday loans? And when 14 I say installment lenders, I'm talking about 15 loans in the range above 100 percent APR. 16 MR. GATEWOOD: Objection, 17 form. 18 THE WITNESS: Sitting here I 19 can't recall who would qualify under that 20 descriptor. 21 BY MR. ACKELSBURG: 22 Q. Now Payday One was an example of one of 23 the payday lenders that branched out into the 24 installment loan business later; am I right?</p>

<p style="text-align: right;">Page 65</p> <p>1 CashCall. And we'll, before we break, get an 2 update from you, as to whether you will permit 3 the witness to answer questions about 4 CashCall. Okay? Does that sound accurately 5 -- 6 MR. HELWIG: Correct, right. 7 BY MR. ACKELSBURG: 8 Q. All right. Ms. Callaway, I want to ask 9 you about a different client, other than 10 CashCall. I want to show you a document and 11 ask whether you recognize it. 12 - - - 13 (Whereupon Exhibit P-378 was 14 marked for identification.) 15 - - - 16 BY MR. ACKELSBURG: 17 Q. So my first question with regard to this 18 document, Ms. Callaway, is whether you recall 19 having a client by the name of cashnet500.com? 20 A. Sitting here today, I don't remember 21 CashNet500. But this letter shows that I had 22 a client called CashNet500. 23 Q. If I were to tell you that CashNet500 24 was one of Adrian Rubin's businesses, would</p>	<p style="text-align: right;">Page 67</p> <p>1 assistant U.S. attorneys or by the federal 2 agents that were investigating that case? 3 A. No, I was not. 4 Q. Okay. And you were never informed that 5 you were on a witness list or a potential 6 list? 7 A. I was not informed of that. 8 Q. But I am going to represent to you that 9 as part of Mr. Rubin's cooperation with the 10 Government, he was also cooperating with some 11 of us on the consumer protection side of the 12 world, okay. I am just making that 13 representation to you. And that Mr. Rubin 14 shared with me some documents that he 15 represented as being related to his 16 relationship with you, his attorney/client 17 relationship with you. 18 MR. HELWIG: Was that a 19 question? 20 BY MR. ACKELSBURG: 21 Q. That's just a representation. 22 MR. SMITH: Irv, for the 23 record, you said Mr. Rubin shared this with 24 you or was it an attorney for Mr. Rubin?</p>
<p style="text-align: right;">Page 66</p> <p>1 that refresh your recollection? 2 A. The letter establishes that I 3 represented CashNet500. And if you tell me 4 that that was a company owned by Mr. Rubin, I 5 would believe you. 6 Q. Okay. I'm going to be showing you a 7 number of documents that I will represent to 8 you that Adrian Rubin gave to me, either he 9 personally gave to me or his criminal defense 10 lawyer gave to me. 11 You're aware that Adrian 12 Rubin was a cooperating witness with the 13 federal prosecution of Charlie Hallinan and 14 Scott Tucker; are you not? 15 A. I'm not aware of Mr. Rubin -- any 16 involvement Mr. Rubin had with Scott Tucker. 17 I am aware that Mr. Rubin was a cooperating 18 witness with Charlie Hallinan. 19 Q. And, in fact, you were interviewed by 20 the Feds with regard to the Hallinan 21 prosecution, were you not? 22 A. I don't believe I was. 23 Q. You were not -- so at no point were 24 you -- you weren't interviewed by the</p>	<p style="text-align: right;">Page 68</p> <p>1 BY MR. ACKELSBURG: 2 Q. I don't recall -- Mr. Rubin gave me some 3 things, his lawyer gave me some things, and 4 some things were over e-mail and some things 5 were in person. But I met personally with Mr. 6 Rubin on a number of occasions. 7 So I'll just represent to you 8 that this came from Mr. Rubin, either 9 personally or through his counsel, with copies 10 -- of any e-mail that was copied to Mr. Rubin. 11 That's just a representation I'm making to you 12 here as a member of the bar. 13 I just wanted you to 14 understand the context of my having these 15 documents and asking you questions about them. 16 That's all. That's not a question, that's 17 just so that you have some understanding and 18 your counsel has some understanding, and the 19 other lawyers in the room have some 20 understanding as how I came to have possession 21 of this these documents. 22 All right. One of the things 23 that Adrian Rubin told me was that you and a 24 Wilmington lawyer named Wheeler Neff counseled</p>

<p style="text-align: right;">Page 69</p> <p>1 him on setting up a bank model business with a</p> <p>2 bank called County Bank of Rehoboth Beach</p> <p>3 Delaware. I'm just telling you that, and I'm</p> <p>4 asking, would that be a true statement?</p> <p>5 MR. GATEWOOD: Objection to</p> <p>6 form.</p> <p>7 MR. HELWIG: I'll object and</p> <p>8 instruct her not to answer, because it would</p> <p>9 reveal privileged attorney/client</p> <p>10 communications.</p> <p>11 MR. SMITH: Irv, I'll object</p> <p>12 to the relevance. I don't know where you're</p> <p>13 going with any of this.</p> <p>14 BY MR. ACKELSBURG:</p> <p>15 Q. Mr. Neff -- I'm sorry, Mr. Rubin -- one</p> <p>16 of the things Mr. Rubin said to me was that he</p> <p>17 was referred to you and Mr. Neff by Charlie</p> <p>18 Hallinan. Would that have been true?</p> <p>19 MR. GATEWOOD: Objection,</p> <p>20 form.</p> <p>21 MR. ACKELSBURG: There's no</p> <p>22 advice in there. It's about a referral.</p> <p>23 MR. GATEWOOD: I haven't</p> <p>24 directed her not to answer, but I object to</p>	<p style="text-align: right;">Page 71</p> <p>1 relationship between one of Mr. Rubin's</p> <p>2 businesses and County Bank of Rehoboth Beach</p> <p>3 Delaware.</p> <p>4 MR. HELWIG: I'll object and</p> <p>5 direct her not to answer if that would reveal</p> <p>6 privileged communications between you and</p> <p>7 whatever client you were representing at the</p> <p>8 time.</p> <p>9 THE WITNESS: I do recall</p> <p>10 that there was a -- that there was a</p> <p>11 relationship, yes.</p> <p>12 BY MR. ACKELSBURG:</p> <p>13 Q. County Bank of Delaware had</p> <p>14 relationships with a number of your clients;</p> <p>15 am I right?</p> <p>16 A. I did represent companies that had</p> <p>17 relationships with County Bank, yes.</p> <p>18 Q. And the same goes with the First Bank of</p> <p>19 Delaware, correct?</p> <p>20 A. I did represent companies that marketed</p> <p>21 and serviced loans for First Bank of Delaware,</p> <p>22 yes.</p> <p>23 Q. Do you recall Adrian Rubin's</p> <p>24 relationship with County Bank of Delaware</p>
<p style="text-align: right;">Page 70</p> <p>1 the form. I don't know how she would know</p> <p>2 that, if she knew it from a conversation with</p> <p>3 Rubin, then it would be privileged and I'd</p> <p>4 direct her not to answer.</p> <p>5 BY MR. ACKELSBURG:</p> <p>6 Q. Understood. Did Charlie Hallinan have</p> <p>7 anything to do with you beginning</p> <p>8 representation of Adrian Rubin?</p> <p>9 A. Sitting here, I can't recall.</p> <p>10 Q. Okay.</p> <p>11 A. But I don't believe I represented Mr.</p> <p>12 Rubin. I recognize this name, CashNet500,</p> <p>13 yes.</p> <p>14 Q. Again, I'm not asking you whether you</p> <p>15 represented Mr. Rubin personally. I'm asking</p> <p>16 you whether you represented companies that you</p> <p>17 knew were associated with Adrian Rubin, where</p> <p>18 he was your client contact.</p> <p>19 A. I would have to say I don't recall</p> <p>20 CashNet500 -- sitting here, I don't have a</p> <p>21 recollection of that representation. But I do</p> <p>22 recognize this letter to me on behalf of</p> <p>23 CashNet500, yes.</p> <p>24 Q. Do you recall that there was a</p>	<p style="text-align: right;">Page 72</p> <p>1 falling apart over his undisclosed criminal</p> <p>2 record? Do you remember that happening?</p> <p>3 A. That, I don't recall.</p> <p>4 Q. Okay. Do you remember, I'm going to</p> <p>5 mention some other businesses of his and ask</p> <p>6 whether that sounds familiar. CRA Services,</p> <p>7 do you remember that company?</p> <p>8 A. I am familiar with that company, yes.</p> <p>9 Q. What about Global PayDay Loan, LLC,</p> <p>10 doing business as CashNet500?</p> <p>11 A. Global -- that, I recall, Global, yes.</p> <p>12 Q. So CashNet500 was doing business, that</p> <p>13 was a fictitious name used by Global PayDay</p> <p>14 Loan, LLC, as far as you can recall, right?</p> <p>15 A. I will accept that representation from</p> <p>16 you.</p> <p>17 Q. All right. Now am I right that there</p> <p>18 was a period of time that Mr. Rubin was making</p> <p>19 loans after he lost the bank relationship,</p> <p>20 which I'll represent to you is County Bank of</p> <p>21 Delaware, that he continued making loans in</p> <p>22 Pennsylvania and other states as a licensed</p> <p>23 lender in Utah or Delaware, do you remember</p> <p>24 that period?</p>

<p style="text-align: right;">Page 73</p> <p>1 MR. GATEWOOD: Objection,</p> <p>2 form.</p> <p>3 MR. HELWIG: Yeah, I'm not</p> <p>4 sure -- do you remember that period? Remember</p> <p>5 what about that period?</p> <p>6 THE WITNESS: I don't</p> <p>7 remember Mr. Rubin himself making loans.</p> <p>8 BY MR. ACKELSBURG:</p> <p>9 Q. Right, and when I'm talking about Adrian</p> <p>10 Rubin, I understand that he never made loans</p> <p>11 as Adrian Rubin. I'm really talking more</p> <p>12 about Global PayDay Loan, LLC, doing business</p> <p>13 as CashNet500. That's really more my</p> <p>14 question.</p> <p>15 Do you remember when Global</p> <p>16 PayDay Loan, LLC, doing business as CashNet500</p> <p>17 evolved from a bank model to making loans as</p> <p>18 -- out of licenses in Utah, Delaware -- other</p> <p>19 states? Do you remember that period?</p> <p>20 MR. GATEWOOD: Objection to</p> <p>21 form.</p> <p>22 THE WITNESS: I don't recall</p> <p>23 that period.</p> <p>24 BY MR. ACKELSBURG:</p>	<p style="text-align: right;">Page 75</p> <p>1 next exhibit which was P-379.</p> <p>2 - - -</p> <p>3 (Whereupon Exhibit P-379 was</p> <p>4 marked for identification.)</p> <p>5 - - -</p> <p>6 BY MR. ACKELSBURG:</p> <p>7 Q. Have you had a chance to review it?</p> <p>8 A. Yes.</p> <p>9 Q. Does -- do you remember this specific</p> <p>10 letter?</p> <p>11 A. Do I remember this specific letter?</p> <p>12 Q. Yeah.</p> <p>13 A. No, I don't.</p> <p>14 Q. Do you remember writing letters like</p> <p>15 this, in this period of time?</p> <p>16 MR. GATEWOOD: Objection,</p> <p>17 form.</p> <p>18 THE WITNESS: I do not</p> <p>19 remember writing -- I see this letter that I</p> <p>20 wrote, but I don't have -- to answer your</p> <p>21 question, generally, no.</p> <p>22 BY MR. ACKELSBURG:</p> <p>23 Q. During this period of time, we're</p> <p>24 looking at 2005, one of the services you</p>
<p style="text-align: right;">Page 74</p> <p>1 Q. Let me show you the next document.</p> <p>2 First of all, in terms of the document that I</p> <p>3 just showed you, 378, I just want to be clear.</p> <p>4 You're communicating on behalf of CashNet with</p> <p>5 regard to some kind of a law enforcement</p> <p>6 demand that was directed to CashNet500; am I</p> <p>7 right?</p> <p>8 A. Actually, this is a letter from</p> <p>9 Maryland's Department of Labor, Licensing and</p> <p>10 Regulation to me regarding CashNet.</p> <p>11 Q. So if you read the second sentence:</p> <p>12 After reading your letter, I must reiterate</p> <p>13 that Maryland law requires your client's</p> <p>14 company to have a Maryland license in order to</p> <p>15 make loans to Maryland residents. Do you see</p> <p>16 that?</p> <p>17 A. Yes.</p> <p>18 Q. Then he says: I am referring this</p> <p>19 matter to the attorney general's office,</p> <p>20 right?</p> <p>21 A. That's what it says.</p> <p>22 Q. Okay. Now what I want to show you is</p> <p>23 the letter that I think Mr. Prozeralik was</p> <p>24 responding to. And I am going to show you the</p>	<p style="text-align: right;">Page 76</p> <p>1 provided to your clients in this -- within</p> <p>2 this industry, was that you would handle</p> <p>3 regulatory inquiries that were directed to</p> <p>4 them from state attorney's general or other</p> <p>5 regulatory agencies; am I right?</p> <p>6 A. That is correct.</p> <p>7 Q. You will see just -- you'll see the</p> <p>8 context of this is that CashNet500 -- you're</p> <p>9 responding to a -- I think you can see from</p> <p>10 the context that this investigator in Maryland</p> <p>11 is basically saying to CashNet500 that they</p> <p>12 need a Maryland license in order to be making</p> <p>13 loans to Maryland citizens. Do you see that?</p> <p>14 A. Yes.</p> <p>15 Q. Okay.</p> <p>16 A. I see that from 378.</p> <p>17 Q. So -- and your response to Mr. Wink, the</p> <p>18 investigator, is that in your judgement</p> <p>19 CashNet500 does not need a Maryland license</p> <p>20 because it's licensed in Utah and has no</p> <p>21 presence in the State of Maryland. That's</p> <p>22 what you said to the State of Maryland; am I</p> <p>23 right?</p> <p>24 A. I did not say "in my judgement".</p>

<p style="text-align: right;">Page 77</p> <p>1 Q. Right. Taking out the word, "in your 2 judgement", that's what you were saying, 3 right? 4 A. The document speaks for itself, and I 5 don't want to give any answer that would be 6 misleading about what the document says. 7 Q. That's fine. Is there anything about 8 this letter which suggests to you that you 9 didn't make the representations in this letter 10 to Mr. Wink? 11 MR. GATEWOOD: Objection, 12 form. 13 THE WITNESS: No, and I 14 didn't suggest that. The letter, I have no 15 reason to believe that this letter is anything 16 but an accurate representation of my 17 communication. 18 MR. HELWIG: I would note for 19 the record, and again the document speaks for 20 itself, there's no signature and no letterhead 21 on this. 22 BY MR. ACKELSBURG: 23 Q. That's very true. 24 A. I don't -- this is definitely a draft</p>	<p style="text-align: right;">Page 79</p> <p>1 same objection. And the way I hear the 2 question, it seems by definition it's asking 3 for attorney/client advice or communication. 4 So to that extent, I would 5 direct you not to answer, unless you think 6 there's a way you can answer that, that 7 doesn't implicate privileged communications. 8 BY MR. ACKELSBURG: 9 Q. Did you ever visit or evaluate any 10 on-site operations of any of the lending 11 businesses associated Adrian Rubin? 12 A. I don't know that I can answer that. 13 MR. HELWIG: If you can't 14 answer that without revealing client -- 15 BY MR. ACKELSBURG: 16 Q. Whether you ever saw an operation? I am 17 not asking anything you said, I'm asking what 18 you saw. 19 MR. GATEWOOD: You're asking 20 her what she evaluated in order to come up 21 with the information that she's providing in 22 this letter. I think that that's outside the 23 bounds of what is permissible for her to 24 testify about.</p>
<p style="text-align: right;">Page 78</p> <p>1 with my name on it. 2 Q. I see that. 3 A. And so -- I mean I take the document for 4 what it is. 5 Q. Right, I do too. Okay, thank you. 6 Now at the time that you were 7 representing CashNet500, the d/b/a of Global 8 PayDay Loan, you knew that all of the 9 operations of that company were based in 10 Suburban Philadelphia, didn't you know that? 11 A. No, I did not. 12 Q. Would it have mattered to you in 13 communicating with the State of Maryland with 14 regarding his need for a license at this 15 period of time, whether or not he had a 16 physical presence within the State of 17 Pennsylvania, for example? 18 MR. GATEWOOD: Objection, 19 form. Even though you're asking about this 20 specific client, I'll instruct the witness not 21 to answer to the extent that it would disclose 22 attorney/client information that was provided 23 to my client. 24 MR. HELWIG: And I would --</p>	<p style="text-align: right;">Page 80</p> <p>1 It's Ted's objection, not 2 mine. But it seems that you're asking her to 3 opine on what she evaluated in coming up with 4 what's in this letter. 5 BY MR. ACKELSBURG: 6 Q. Let me ask the question again. Did you 7 ever visit Adrian Rubin's operations in 8 Suburban Philadelphia? 9 MR. HELWIG: I will instruct 10 her not to answer. 11 MR. ACKELSBURG: Let's go to 12 the next document. This 380. 13 - - - 14 (Whereupon Exhibit P-380 was 15 marked for identification.) 16 - - - 17 BY MR. ACKELSBURG: 18 Q. Have you had a chance to look at these a 19 little bit while we were offline, right? 20 A. No. 21 Q. You didn't, okay. My question is, in 22 looking at P-380, does this document look 23 familiar to you? 24 A. It does not. It is not something I</p>

<p style="text-align: right;">Page 81</p> <p>1 would say I'm familiar with.</p> <p>2 Q. If I were to tell you I got this from</p> <p>3 Adrian Rubin, are you suggesting there's</p> <p>4 anything -- this is a counterfeit or anything</p> <p>5 like that?</p> <p>6 A. No, and I haven't suggested that in any</p> <p>7 way.</p> <p>8 Q. Okay. So this appears to be a copy, and</p> <p>9 I realize it's without the letterhead and it's</p> <p>10 without a signature, but this appears to be a</p> <p>11 copy of a letter sent to the West Virginia</p> <p>12 Office of the Attorney General on behalf of</p> <p>13 Global PayDay Loan, LLC.</p> <p>14 Are you -- if Mr. Rubin had</p> <p>15 this -- if I have it, are you -- can we agree</p> <p>16 that this letter, probably with your signature</p> <p>17 and letterhead, was sent to the office of the</p> <p>18 West Virginia Attorney General in conforming</p> <p>19 to this copy?</p> <p>20 MR. GATEWOOD: Objection to</p> <p>21 form. This is clearly a draft letter.</p> <p>22 THE WITNESS: I don't have</p> <p>23 the exact -- I don't have a copy of the</p> <p>24 transmitted letter, it appears. So I don't</p>	<p style="text-align: right;">Page 83</p> <p>1 381, Plaintiff's Exhibit 381. Have you had a</p> <p>2 chance to look at Exhibit P-381?</p> <p>3 A. I have skimmed through the 19 pages. I</p> <p>4 wouldn't say I've had a comprehensive review</p> <p>5 of it, but I'm still looking at it.</p> <p>6 Q. Can you tell me what this appears to be?</p> <p>7 A. This appears to be a draft opinion.</p> <p>8 Q. It does. It also appears that some of</p> <p>9 the -- there is that -- do you see the portion</p> <p>10 in red?</p> <p>11 A. On the first page?</p> <p>12 Q. Yes.</p> <p>13 A. Yes.</p> <p>14 Q. Do you see that it says remove all</p> <p>15 headers regarding CRA? Do you see that?</p> <p>16 A. Yes, I do.</p> <p>17 Q. If you turn the page, you will see that</p> <p>18 the rest of the letter is actually an opinion</p> <p>19 for a different company, CRA Services Corp,</p> <p>20 right? Do you see that?</p> <p>21 A. It appears that the draft -- in the</p> <p>22 draft the headers say CRA Services.</p> <p>23 Q. CRA Services, I think we might have</p> <p>24 actually mentioned this before, but I think I</p>
<p style="text-align: right;">Page 82</p> <p>1 really know how to answer your question. I</p> <p>2 have no concerns that this is -- until you</p> <p>3 suggested that it was doctored, it didn't</p> <p>4 enter my mind. I don't even know where -- I</p> <p>5 guess it's possible somebody doctored it, but</p> <p>6 I don't have a copy of what was actually sent.</p> <p>7 BY MR. ACKELSBURG:</p> <p>8 Q. If your lawyer were to ask you to look</p> <p>9 at your old files, do you still have files for</p> <p>10 the Bernie Rubin companies -- Adrian Rubin</p> <p>11 companies?</p> <p>12 A. You know, coming into this room I</p> <p>13 couldn't recall representing these companies.</p> <p>14 I don't think that these -- I don't know that</p> <p>15 I represented these companies after Paul</p> <p>16 Hastings. I may have, but I don't believe I</p> <p>17 have files. I don't believe that I have files</p> <p>18 at Katten for them.</p> <p>19 - - -</p> <p>20 (Whereupon Exhibits P-381 and</p> <p>21 P-382 were marked for identification.)</p> <p>22 - - -</p> <p>23 BY MR. ACKELSBURG:</p> <p>24 Q. Let me show you the next exhibit, it's</p>	<p style="text-align: right;">Page 84</p> <p>1 forgot. CRA services was another one of those</p> <p>2 companies besides CashNet500 that was</p> <p>3 connected in some way to Adrian Rubin; am I</p> <p>4 right?</p> <p>5 A. I believe that's the case, yes.</p> <p>6 Q. And this appears to be Adrian Rubin</p> <p>7 asking you for an opinion like you did for CRA</p> <p>8 Services Corp, but he wants it for two</p> <p>9 different companies. Do you see that?</p> <p>10 MR. GATEWOOD: Objection,</p> <p>11 form.</p> <p>12 THE WITNESS: I don't know</p> <p>13 that this appears to be what Mr. Rubin is</p> <p>14 asking. I see the draft, and I see that there</p> <p>15 are changes made. I don't know who made the</p> <p>16 changes in red.</p> <p>17 BY MR. ACKELSBURG:</p> <p>18 Q. Do you remember producing any opinions,</p> <p>19 without getting into the content of the</p> <p>20 opinions, do you remember producing any</p> <p>21 written opinions for any of Mr. Rubin's</p> <p>22 companies?</p> <p>23 MR. HELWIG: Can I ask for a</p> <p>24 clarification? Do you mean to third parties?</p>

<p style="text-align: right;">Page 85</p> <p>1 BY MR. ACKELSBURG:</p> <p>2 Q. Thank you, Ted. Let me just ask you</p> <p>3 this question instead. From time to time, you</p> <p>4 prepared -- you have prepared for payday</p> <p>5 lenders or installment lenders opinion letters</p> <p>6 that are directed to the client, but where you</p> <p>7 understand the client is going to show these</p> <p>8 opinions to some third party.</p> <p>9 MR. GATEWOOD: Objection to</p> <p>10 form.</p> <p>11 BY MR. ACKELSBURG:</p> <p>12 Q. You have done work like that in the</p> <p>13 past; am I right?</p> <p>14 A. I don't know that I've prepared an</p> <p>15 opinion directed to a client with an</p> <p>16 understanding that it can be shared with a</p> <p>17 third party.</p> <p>18 Q. Let me ask you a different question. Am</p> <p>19 I correct that you have, from time to time,</p> <p>20 generated letters to third parties on behalf</p> <p>21 of clients that look somewhat like this?</p> <p>22 A. I wouldn't say yes to that question</p> <p>23 either.</p> <p>24 Q. I don't mean with all of this red and</p>	<p style="text-align: right;">Page 87</p> <p>1 for the 50 states and the District of Columbia</p> <p>2 reveals as follows.</p> <p>3 Q. And that's something you would do from</p> <p>4 time to time for clients; am I right? Without</p> <p>5 making any specific --</p> <p>6 MR. GATEWOOD: Your prior</p> <p>7 question, Irv, was prefaced with: Did she</p> <p>8 prepare these for third parties? Then you</p> <p>9 went back to this document, which doesn't</p> <p>10 appear to have been prepared for a third</p> <p>11 party. So just please clarify what you're</p> <p>12 asking.</p> <p>13 BY MR. ACKELSBURG:</p> <p>14 Q. Have you ever prepared opinions for</p> <p>15 third parties that specifically review choice</p> <p>16 of law principles in the states?</p> <p>17 MR. GATEWOOD: Objection to</p> <p>18 the form.</p> <p>19 THE WITNESS: I believe that</p> <p>20 I have.</p> <p>21 BY MR. ACKELSBURG:</p> <p>22 Q. And in looking at Exhibit P-381, does</p> <p>23 this look familiar to you, in that there --</p> <p>24 that the analysis that state -- choice of law</p>
<p style="text-align: right;">Page 86</p> <p>1 please take out -- I'm really talking more</p> <p>2 about just generically a written opinion about</p> <p>3 the legality of -- or the regulatory -- let's</p> <p>4 say legality. Have you ever issued opinions</p> <p>5 to third parties about the state of the law</p> <p>6 regarding installment or payday lending in</p> <p>7 various states?</p> <p>8 MR. GATEWOOD: Objection,</p> <p>9 form.</p> <p>10 THE WITNESS: I don't know --</p> <p>11 I will say this: The opinion letters are</p> <p>12 specific -- specifically tailored and limited</p> <p>13 to an issue that is opined on. I don't recall</p> <p>14 an opinion about the quote, unquote state of</p> <p>15 the law.</p> <p>16 BY MR. ACKELSBURG:</p> <p>17 Q. Well, you can see what is attached here</p> <p>18 to the opinion letter or the draft opinion</p> <p>19 letter that Mr. Rubin gave to me. There are</p> <p>20 -- there is some analysis of, in this case, of</p> <p>21 the choice of law in various of the states.</p> <p>22 Do you see that?</p> <p>23 A. I see on page four in this draft it</p> <p>24 says: Our review of choice of law principles</p>	<p style="text-align: right;">Page 88</p> <p>1 analysis that's contained, you may have opined</p> <p>2 in similar fashion on behalf of other clients</p> <p>3 to third parties?</p> <p>4 MR. GATEWOOD: Objection to</p> <p>5 the form.</p> <p>6 THE WITNESS: Again, I don't</p> <p>7 think that I opined on choice of law in this</p> <p>8 draft. I don't believe I opined on choice of</p> <p>9 law in this draft.</p> <p>10 BY MR. ACKELSBURG:</p> <p>11 Q. Whatever it is that you did in this</p> <p>12 draft, is this the kind of review that you did</p> <p>13 on other occasions, to third parties on behalf</p> <p>14 of installment or payday lenders?</p> <p>15 MR. GATEWOOD: Objection to</p> <p>16 the form.</p> <p>17 THE WITNESS: In writing an</p> <p>18 opinion letter to a third party, you're not</p> <p>19 doing it on their behalf. You, meaning the</p> <p>20 firm, you are writing the opinion letter on</p> <p>21 your client's behalf but to a third party.</p> <p>22 BY MR. ACKELSBURG:</p> <p>23 Q. Right.</p> <p>24 A. I believe I did draft, and my firms did</p>